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Combined License Applicants Public Meeting

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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PUBLIC MEETING

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FINANCIAL QUALIFICATIONS FOR MERCHANT PLANT  
COMBINED LICENSE APPLICANTS

+ + + + +

THURSDAY

OCTOBER 11, 2012

+ + + + +

ROCKVILLE, MARYLAND

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The Public Meeting convened in the  
Commissioners' Hearing Room of One White Flint North,  
11555 Rockville Pike, at 8:30 a.m., Russell Chazell,  
Moderator, presiding.

NRC STAFF PRESENT:

RUSSELL CHAZELL, Moderator

FRANK AKSTULEWICZ

AMY CUBBAGE

RANI FRANOVICH

TOM FREDRICH

ERIC OESTERLE

MICHAEL SPENCER

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1  
2 ALSO PRESENT:

3 GARY BECKER \*

4 NANCY BROCKWAY

5 PATRICIA CAMPBELL

6 GREG GIBSON

7 ELLEN GINSBERG

8 PETER HASTINGS \*

9 SCOTT HEAD

10 EDWARD KEE

11 PAT LOFTUS \*

12 JOHN MATTHEWS

13 MARK McBURNETT

14 PAUL MURPHY

15 DAVID REPKA

16 JEFF SIMMONS

17  
18 \*Present via telephone  
19  
20  
21  
22  
23  
24  
25  
26

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## P R O C E E D I N G S

8:32 a.m.

MODERATOR CHAZELL: Okay, I guess we'll go ahead and get started. I just want to say thank you to everybody for taking the time to come out to our meeting today.

Good morning and welcome to the Nuclear Regulatory Commission. This public meeting is a discussion of Financial Qualifications for Merchant Plant Combined License Applicants. The meeting is scheduled to begin at 8:30. We're a few minutes behind and scheduled to end at noon today.

My name is Russ Chazell. I'm a project manager in the Policy Branch of the Division of Advanced Reactors and Rulemaking in the Office of New Reactors.

And I have a few announcements before we begin. This is a Category 3 public meeting. The public is invited to participate in this meeting by providing comments and asking questions throughout the meeting. Please sign the attendance roster near the door either now or after the meeting. The roster will be part of the official agency record.

Postage-page feedback forms are next to the attendance roster. Please complete them during the meeting or take them with you to mail back later.

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1 We value your opinion and we'll use your input for  
2 improvements. And all the slides, and other meeting  
3 handouts, the agenda, are all by the door as well.

4 There will be a meeting summary for this meeting and all  
5 the handouts will be available in ADAMS.

6 This meeting is also attended by toll-free  
7 audio teleconference and GoToMeeting. If there are  
8 attendees on the line, I think we can tell who you are  
9 through the GoToMeeting process. If you hear fire  
10 alarms, please exit the building to the lobby. Rest  
11 rooms are located outside this conference room and down  
12 the hall toward the cafeteria.

13 I'd like to just start out by introducing  
14 the people sitting at the table here. I'll start with  
15 our Division Director, Mike Mayfield. He's the Director  
16 of the Division of Advanced Reactors and Rulemaking.  
17 Rani Franovich and you're the Director of?

18 MS. FRANOVICH: Actually, I'm here in place  
19 of Ho Nieh who is the Director of the Division of  
20 Inspection and Regional Support in the Office of Nuclear  
21 Reactor Regulation.

22 MODERATOR CHAZELL: Thank you.  
23 Anneliese?

24 MS. SIMMONS: My name is Anneliese Simmons.  
25 I'm a Financial Analyst and I work for Rani.

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1 MS. CUBBAGE: Amy Cubbage. I'm the Chief  
2 of the Policy Branch in the Office of New Reactors.

3 MODERATOR CHAZELL: Thank you. Now let's  
4 get started by laying out the plan for today's meeting.  
5 I'll start by providing some background for today's  
6 discussion topic and then introduce our first presenter,  
7 Ms. Anneliese Simmons, one of our NRC Financial  
8 Qualification Reviewers. She will give us an overview  
9 of the current state of NRC financial qualification  
10 analyses.

11 Then we'll hear three outside stakeholders  
12 discuss the challenges of merchant and plant finances.  
13 After that, we'll hear from a merchant/plant COL  
14 applicant. Each of the presentations will be 15 minutes  
15 in duration. Then we'll have a short break. And after  
16 the break, we'll start our open discussion of the issue.

17 To give the presenters time to complete  
18 their presentations, please hold your questions until  
19 the open discussion period. When speaking, please  
20 identify yourself and your affiliation and speak loudly  
21 enough for all to hear. We have hand-held microphones  
22 available as well.

23 Lastly, we have a transcriptionist present  
24 so that a record of our discussion will be available for  
25 future reference.

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1           And I'd like to just from a logistical  
2 perspective, I'd just like to say when we do the  
3 presentations, if you want to invite other people to come  
4 down and join you at the table, the presenters, that's  
5 great. And then when you're finished with your  
6 presentation, please step away from the table and we'll  
7 have the next presenter come down. Once we're done with  
8 all the formal presentations and we get back from the  
9 break, if you want to move chairs down here or we'll still  
10 have the hand-held microphones and we'll have more of an  
11 informal roundtable at that time.

12           And we'll also be asking the people on the  
13 bridge line if they have comments or questions and you  
14 can talk to Jonathan through the chat function in  
15 GoToMeeting to let us know that you have something to say.

16           With that, I'll begin. Today's meeting is  
17 intended for the NRC to hear from the public on the issue  
18 of the ability of merchant plant COL applicants to  
19 provide the information necessary to support the NRC's  
20 finding on financial qualifications. Some interested  
21 stakeholders have expressed the opinion that it is  
22 difficult for merchant plants to secure funding before  
23 issuance of the COL. Merchant plant applicants, the  
24 argument goes, may not be able to demonstrate project  
25 viability to potential business partners without

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1 possessing a COL, thereby creating a chick-and-egg  
2 conundrum for merchant plant applicants. The NRC staff  
3 has decided to explore this question further and so we're  
4 having today's meeting to gather your thoughts on it.

5 This will be the first of other meetings.  
6 If we feel the need to do other meetings later, we will  
7 do that.

8 As I said earlier, we have several  
9 presenters this morning. The biographical information  
10 I'll give you as we proceed. It came either from their  
11 presentations, was provided separately, or was found on  
12 their websites.

13 Our first presenter, Ms. Anneliese Simmons,  
14 is a financial qualification reviewer in the Office of  
15 Nuclear Reactor Regulation and she will tell us about the  
16 current state of NRC financial qualifications review  
17 processes and requirements.

18 Before we get started with Anneliese, I'll  
19 just ask if there's anything that you all would like to  
20 add before get started?

21 MR. MAYFIELD: Well, Russ, I think I'd just  
22 like to reiterate the point that we got -- we started  
23 today's meeting with the notion of trying to gather some  
24 insight and information from stakeholders with the idea  
25 of framing a future discussion on this topic. This was

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1 not expected to be the one and only meeting on this  
2 subject, but we had to start somewhere, so we wanted to  
3 start with a less formal, more open-ended dialogue to  
4 make sure we understood fully the industry's  
5 perspective, stakeholders' perspectives, on what this  
6 issue really is, how broad the scope is and from that then  
7 use that as a structure to put together other meetings  
8 on this topic, if indeed we need to go further.

9 So we're at this stage gathering some  
10 information to talk about internally, as well as with  
11 you, about how to go forward, if we go forward and there  
12 seem to be some misunderstanding that this was going to  
13 be the one and only discussion on this subject which we  
14 don't think will be the case. So with that, I'll turn  
15 it back to Russ and Anneliese.

16 MODERATOR CHAZELL: Thanks, Mike.  
17 Anneliese?

18 MS. SIMMONS: Thanks, Russ. I work for the  
19 Office of Nuclear Reactor Regulation. Of course, these  
20 folks are the new reactor folks and we support them in  
21 our financial qualifications reviews. I just want to  
22 thank them for organizing this meeting. I do love to  
23 talk about money, but I'm not going to take 15 minutes  
24 to do that. I'm just going to step through the NRC's  
25 financial qualifications requirements. I'm going to

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1 leave a couple of minutes at the end so that our staff  
2 attorneys can comment or clarify any of the points that  
3 I'm making.

4 It's really important, of course, for the  
5 staff to hear a broad range of views on this topic. It's  
6 pretty complex and of course, as we have more merchant  
7 plants, we're realizing how complicated it is becoming.

8 First, if we could -- first slide. I'm  
9 going to talk about -- there's two, two, and two.  
10 There's two parts to our financial qualifications  
11 requirements. There's two different kinds of  
12 utilities. And there's two different kinds of entities.  
13 So just a brief overview, our financial qualifications  
14 requirements have two parts. The first part is found in  
15 10 CFR 50.33 which lists the requirements to meet  
16 reasonable assurance that there will be sufficient  
17 funding for a construction permit, an operational  
18 license. The combined operating license refers back to  
19 those two requirements and the requirement to present a  
20 five-year forecast for non-electric utilities.

21 The second part of our requirements are  
22 found in Appendix C to Part 50. That's where you see all  
23 the details as to what the specific requirements are.  
24 I've attached a free appendix for you to take home in case  
25 you want to read through 50.33.

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1           Let's go to the next slide.

2           There are two different kinds of utilities.  
3       The NRC requirements distinguish between two different  
4       kinds of utilities in the rules. And the first one, and  
5       for many years the only one that we ever had to analyze  
6       were electric utilities. By NRC definitions, those  
7       definitions are found in 10 CFR 50.2, the key point as  
8       an electric utility has access to cost recovery.

9           And back in the '80s, the requirements for  
10       electric utilities were lifted somewhat for financial  
11       qualification because the rationale was that electric  
12       utilities that have access to cost recovery are under the  
13       oversight of a state public service commission. And at  
14       the time, the NRC felt that there was confidence that the  
15       rate-making authority of the state public utility  
16       commissions gave us confidence that these utilities  
17       would always have the ability to meet the costs of safe  
18       construction and safe operation.

19           So the requirements are slightly different  
20       for electric utilities, as I'm sure you're aware. And  
21       we'll go to the next slide which is why we're here, the  
22       non-electric utilities. We call them non-electric  
23       utilities in our requirements. Most people call them  
24       merchant plants.

25           Non-electric utilities are subject to a

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1 full financial qualifications review. So they have a  
2 more detailed set of requirements that they need to meet  
3 because they do not have access to cost recovery. And  
4 I'll go into the specifics on the next two slides.

5 There's two main parts to the financial  
6 qualifications review. First, is that the applicant has  
7 to demonstrate -- we have to make a finding of reasonable  
8 assurance that the applicant has assurance of obtaining  
9 the funds necessary to cover construction costs and  
10 fuel-cycle costs. Some of the more specific  
11 requirements are listed on the slides.

12 The main challenge we have with this  
13 component of the financial qualifications review is that  
14 most applicants today have multiple sources of funds.  
15 It's a lot easier if you just have one source of funds  
16 and it's the rate base. With multiple sources of funds,  
17 we have to review each source of funds, but we also have  
18 to review kind of the sources of funds in the aggregate.  
19 So that's a challenge for the staff.

20 Go to the next slide.

21 The second part of the financial  
22 qualifications review is a finding of reasonable  
23 assurance that the applicant will have sufficient funds  
24 or the ability to obtain funds to cover operation costs  
25 for the period of the license. Well, the period of the

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1 license is pretty long. So the requirement is is that  
2 we expect applicants to give us a five-year pro forma,  
3 a five-year projection of what those operating costs are.

4 Of course, the challenge with the  
5 non-electric utilities, the merchant plants, is that  
6 their debt service, so depending on what the construction  
7 costs are, that debt service needs to be covered by the  
8 revenue stream in their pro forma and that inter-relation  
9 is what is causing a challenge for everybody here today.  
10 Of course, we need to review the sources of funds again,  
11 and also the financial, the credit worthiness of each  
12 source of funds.

13 Go to the next slide.

14 Now to the two different kinds of entities.  
15 So the rules also distinguish between newly formed  
16 entities and established entities. So if we take a step  
17 back again, the rules have two parts, there's two  
18 different kinds of utilities and now there's different  
19 requirements depending on if you're an established  
20 entity or a newly-formed entity. Of course, the  
21 rationale is that an established entity has some sort of  
22 operational experience. They can provide historical  
23 financial information. That's more solid data for the  
24 staff to be able to make a finding. Newly-formed entities  
25 have more detailed requirements because they don't have

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1 that operational history.

2 Of course, many, if not all of our  
3 applicants today fall into that category with the most  
4 specific requirements. They are non-electric utilities  
5 and newly-formed entities. And that's what we're here  
6 to talk about today.

7 Finally, just to wrap it up, oh, Appendix  
8 C to Part 50, very important, can't forget that, very  
9 important. That's where all the details are about what  
10 the additional requirements are for newly-formed  
11 entities and just also hashes out some of the more  
12 detailed requirements that refer back to 50.33.

13 And finally, of course, the caveat we can  
14 always ask for more information if we feel that we need  
15 more detailed information depending on the facts and  
16 circumstances.

17 I'd like to see if the staff attorneys have  
18 anything to add or comment on or if I made any mistakes  
19 or anything like that? Okay. We can always clarify  
20 anything during the conversation, but thank you for  
21 coming today and I'm looking forward to the different  
22 viewpoints. Thank you.

23 MODERATOR CHAZELL: Thanks, Anneliese. I  
24 appreciate that very much. I'm trying to get used to  
25 these microphones here.

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1 All right, then we'll just move into our  
2 presenters. Again, as we said before, we'd like to limit  
3 the presentations to 15 minutes. That way we'll have  
4 plenty of time for our roundtable discussion and we'll  
5 also be able to engage the people on the bridge line. And  
6 I'd like to start first with Mr. Paul Murphy from Milbank.

7 Sir, you can come up and sit at the table  
8 or you can invite other people to join you, if you'd like,  
9 or you can use the hand-held microphone, however you  
10 would like to proceed.

11 Mr. Murphy is a senior attorney at Milbank  
12 Tweed Hadley and McCloy, LLP in Washington, D.C.

13 Mr. Murphy.

14 MR. MURPHY: Thank you very much. I'd like  
15 to thank the NRC for giving me the opportunity to make  
16 these remarks today.

17 Just as a little background on our firm, not  
18 as an advertisement, but more just as background, we're  
19 not a regulatory firm. We don't practice before the NRC.  
20 We kind of stay on the transactional side of things. So  
21 we represent financial institutions, for example, we  
22 represented the Department of Energy on four of the  
23 nuclear loan guarantee applications. We're currently  
24 representing the export credit agencies and the  
25 commercial banks in the financing for the four units in

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1 the UAE and some other things that we can't really talk  
2 about in a public forum. But essentially, we stay on the  
3 transactional side and our finance practice, both  
4 nuclear and non-nuclear, our clients oftentimes are the  
5 banks, whether they be commercial banks or expert credit  
6 agencies.

7 So really these remarks are sort of a  
8 reflection of what we've gleaned from those  
9 representations over the years.

10 You can go to the next slide, please.

11 Unfortunately, I have to leave at 10  
12 o'clock, and I know there's a question and answer period  
13 later, but if anybody has questions, either as I'm going  
14 or at the end, please feel free to interrupt. I come from  
15 an Italian family, so I'm used to getting interrupted a  
16 lot. So that's not a problem.

17 But essentially, these are the four areas  
18 I'm going to try and go through in the allotted time, so  
19 we can go to the next stage. Just to sort of lay the  
20 foundation, again, from a banking perspective, and  
21 whether or not these projects can be financed, what I've  
22 done is provided sort of a classic list of what you would  
23 consider to be concerns from the banking community with  
24 regard to financing a nuclear power project.

25 I think the top four are there for a reason

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1 because I think when you go through these issues you'll  
2 see that those are sort of the classic set of concerns  
3 that you hear first and foremost from the financial  
4 community. The one that I would put that happens to be  
5 their fourth, but reputational risk, I think what we mean  
6 by that -- whenever you talk about a nuclear project,  
7 there's sort of a heightened sensitivity, generally, for  
8 better or for worse. But when you talk about  
9 reputational risk, what I think the banks want to see is  
10 that it's a good project, that it's using responsible  
11 technology. It's complying with international best  
12 practices. It's complying with the case of  
13 international projects, equator principles, or IFC  
14 lending standards to make sure that things are being done  
15 from an environmental and social perspective.

16 And so I think from a banking viewpoint,  
17 when you talk about how a bank would approach a project,  
18 there's on the one side the classic set of concerns, is  
19 this a good project? Am I going to get paid back? How  
20 am I going to get paid back? But then on the  
21 other side, it's all these what you would consider to be  
22 reputational risk issues to make sure that they're being  
23 associated with a responsible project.

24 Next slide, please.

25 Similar to the concerns is sort of a list

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1 of the classic list of risks. From a banker's  
2 perspective again, they want to see that all these risks  
3 have been properly identified and allocated and you can  
4 be sure that they don't want to take any of them. So  
5 they're going to be looking for other people in the deal  
6 to make sure these risks have been properly addressed.

7 Next slide, please.

8 You hear the term project finance. And the  
9 next set of slides really goes into what we mean by that.  
10 And the first point is there's financing of a project and  
11 project finance. Project finance is a term of art. And  
12 really what that means is it's a non-recourse or  
13 limited-recourse structure where you have a  
14 special-purpose entity essentially developing the  
15 project with the banks lending into that SPV and then  
16 looking to the revenue stream generated by that SPV in  
17 operation to pay back the debt.

18 The first point is that we've never had in  
19 the history of the world a textbook project-financed  
20 nuclear power plant. And so there are reasons for that  
21 which I think inform the discussion about merchant power  
22 and how can it be financed, can it not be financed.  
23 Essentially, it's important to understand that there's  
24 a certain set of rules that go with the project finance  
25 concept and we go to the next page.

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1           Some of the reasons why we see that project  
2 finance hasn't seemed to work in the nuclear space, not  
3 that it can't be done, but that there's some challenges  
4 that exist, regulatory risk which is relevant to this  
5 forum right here because as we've seen with the history  
6 of the U.S. fleet that regulatory delays have been  
7 something -- regulatory changes have affected how  
8 projects are brought to market. Political risks, we've  
9 seen instances in places like Germany that have made  
10 wholesale changes in their view toward nuclear power.  
11 And so we have sort of the public-opinion component to  
12 all of this that can impact whether or not projects are  
13 viable.

14           The classic schedule issues of can you  
15 deliver it on time and then the budget issues of can you  
16 deliver it on budget? When you talk about project  
17 finance and nuclear because you're thinking about  
18 generally a five-year construction period, if you miss  
19 by a year and somebody has loaned you \$100,000 or \$100  
20 million, it's not that big a deal. When someone may have  
21 loaned you \$8 billion or \$10 billion, that starts to  
22 become a really big deal.           And so because of  
23 the orders of magnitude of these projects, a little bit  
24 of a miss becomes a really big problem from a financing  
25 perspective.

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Moreover, very nuclear-specific concerns in a project-finance structure, if the project goes bad the banks come in, they can take the asset. That doesn't really work in nuclear for a couple of reasons. First, if the banks take the asset, they have concrete, steel, and some stuff that you should only touch in very specific instances. And you can't operate it because you have to be licensed operator. So there's a disconnect between a bank taking over the asset and what a regulatory regime does in terms of how that asset can be operated. In a lot of places, it's a strategic asset for a country. You know, in the United States, it's a little bit different, but generally speaking in the world it's viewed as a strategic asset.

And then on top of it, it's a very specific asset. If you're doing a project financing of a toll road, if you don't like the way someone is paving the road, you terminate them, you bring in somebody else and they keep paving the road. It's not very exciting. But when you consider the NSSS market if you terminate an AREVA, if you terminate a Westinghouse, there's nobody that can really come in and finish that project because the technology is very specific. So these are sort of that when you hear, well, why doesn't project financing work it's important to understand what we're talking

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1 about.

2 Next slide, please.

3 So what we have in the United States is the  
4 classic utility balance sheet model where you're looking  
5 at the utility doing this traditionally in regulated  
6 markets based on the history of the utility markets of  
7 the United States where they can pass the development  
8 costs along. And in the good old days, whatever it ended  
9 up costing you just rolled it into the rate base. Now  
10 with prudence reviews, that's not so easy. We're seeing  
11 that in certain regulatory markets now.

12 Next slide, please.

13 But the reality is one of the challenges is  
14 our utilities aren't that big when you look at the size  
15 of these projects. And so here's just a snapshot of the  
16 size of our utilities. And one of the things we used to  
17 hear is that well, in Europe, the situation is different.

18 If you could go to the next slide, please?

19 You can see that that's changed  
20 drastically, and so even in Europe a lot of their  
21 utilities are facing the same issues in terms of  
22 capacity. And just for fun, if you go to the next slide,  
23 you can see why can oil companies do these massive  
24 petrochemical projects and they don't seem to have a  
25 problem. They live in a different neighborhood based on

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1 the size of their market caps, so it's a completely  
2 different ballgame. And that's just for thinking about  
3 things.

4 Next slide.

5 So size does matter. And if you're looking  
6 at relying on the balance sheet to make this happen, one  
7 of the consequences is the burden that it places on a  
8 credit rating. And that starts to discourage utilities  
9 from going forward and doing this on a balance-sheet  
10 basis and rating agencies take a very conservative view  
11 with regard to nuclear. So it's this vicious cycle of  
12 well, if I put it on my balance sheet, then I get dinged  
13 by the rating agencies. Then my credit rating goes down.  
14 Then it costs me more money to raise elsewhere for other  
15 things I want to do and it's this vicious cycle.

16 And again, because of these long  
17 development periods and then 60 to perhaps 80 years of  
18 operation, it's very hard for an executive to walk into  
19 a board room and say check this out, I've got this great  
20 idea. We're going to spend billions of dollars for the  
21 next ten years. We're not going to see any money, but  
22 don't worry. Forty years from now when we're all dead,  
23 this thing is going to be making tons of money. It's not  
24 really a winning proposition for a corporate. And  
25 that's kind of the challenge that we have to deal with.

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1           So moving on, what do banks want to see?  
2           They want to see certainty. They want to see on time,  
3           on budget, proven technology, risk allocation,  
4           government commitment, a clear and predictable  
5           regulatory process which as we've changed our regulatory  
6           process now, it is now uncertain because no one actually  
7           has really gone through it until just very recently to  
8           get the combined construction and operating license  
9           application. That's been a point of uncertainty.  
10          Hopefully, we get past that.

11                 Where do you tie financing and licensing  
12          together? I think there are a number of answers to that.  
13          But before banks would want to fund into a project, they  
14          would want to make sure that the licenses are properly  
15          obtained. And so you start getting into when do you go  
16          for financing? When do you go for your license and these  
17          timing issues become very significant. But from a  
18          market perspective, ideally what banks would like to see  
19          if you're talking a merchant project is not selling on  
20          the spot market. You'd want to see long-term PPAs that  
21          you can look to with dedicated credit worthy off-takers  
22          that can show that the debt will be serviced at least for  
23          the term of the debt.

24                 And so what are the challenges for nuclear?  
25          Circling all the way back to those initial slides, right

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1 now we don't have such a good story on on time, on budget.  
2 Hopefully, that changes over time. But until we have a  
3 lot of data points for projects in the United States that  
4 does make it a problem. Moreover, nuclear is a price  
5 taker, it's not a price setter. And when you look at  
6 where gas prices are today, that makes it very hard to  
7 justify a new nuclear project competing with gas prices,  
8 based on current market pricing for gas and for  
9 electricity. You need something else. That's why we  
10 reference the PPA.

11 Next slide, please.

12 So this doesn't sound like a very good  
13 story, you know? It's all sort of doom and gloom  
14 perhaps, but you know I think then you have to take a step  
15 back and you say okay, well, here are the challenges for  
16 a merchant. I mean hopefully nothing that I've said is  
17 all that innovative and these are fairly recognizable  
18 ideas. But you know in a broader sense, how does nuclear  
19 fit into our energy strategy overall? Do we want to have  
20 concerns about energy security, energy diversity?  
21 Where do we put nuclear in a broader sense? Is the story  
22 on natural gas fully told? We're enjoying really low  
23 prices now, but you read stories about wells being  
24 contaminated and seismic events because of fracking.  
25 The story is not fully written on the natural gas market.

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1 And so do we rush all -- put our chips all on the table  
2 for one form of generation? Or do we want to have a  
3 diversified portfolio? How does this fit within our  
4 carbon goals because if we look at baseload generation  
5 needs, we look at carbon needs, conservation, renewables  
6 and natural gas is a nice combination, but you know, you  
7 can't get there from here. Nuclear has its place in this  
8 mix.

9 So the question is well, how do we drive  
10 things to that? And if the licensing process starts to  
11 marginalize merchant plants, we're limiting our options  
12 and I think that is the challenge in all of this is that  
13 yes, we don't have a great story from a financing  
14 perspective, but what is the consequence if we fully  
15 exploit that story to the extreme and say okay, we're just  
16 not going to go there. There may be larger consequences  
17 that have to be put into play.

18 And so if we take the view then that we don't want to close  
19 the door on merchant nuclear power, what should the NRC  
20 be thinking about?

21 And we can go to the next slide.

22 I think at the end of the day it starts to  
23 become sort of a project viability test. You know, if  
24 someone shows up with a license is this guy a serious  
25 player? Is this someone we should give the time of day

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1 to? Should we invite him in for coffee? And the  
2 reality is what types of things we should consider? Is  
3 it proven technology or not? How much is  
4 first-of-a-kind and let's not abuse that term because  
5 just because a plant has never been built before doesn't  
6 mean the entire plant is first-of-a-kind. And there's  
7 a balance in all of that.

8 Who are the people? What kind of financial  
9 strength do they have? How much equity can they commit  
10 to this project and is it believable? What kind of  
11 contracts do they have in place? Who are the project  
12 participants? Is this someone who has never done it  
13 before, someone who has never built it before, someone  
14 who has never operated it before? That's creating all  
15 kinds of uncertainty, not just for the regulatory review  
16 process, but the banks are going to look very dimly on  
17 those things.

18 And what we're trying to get to is is this  
19 feasible? What's the market feasibility study that's  
20 been done? Is there a credible financing plan that this  
21 thing has a snowball's chance in hell of ever coming to  
22 fruition? And that's kind of the test. Is there a real  
23 project? And then the question is is the NRC in a  
24 position to make those kind of economic assessments? I  
25 don't know the answer to that.

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1 I'm here to sort of say that I have that  
2 answer, but that becomes possibly part of the process  
3 because at the end of the day, if you can finance it is  
4 the make or break test for any of these nuclear projects.  
5 It's probably the largest challenge for projects  
6 worldwide, whether it's regulated or merchant, whether  
7 it's in the United States or elsewhere. That's sort of  
8 where the rubber hits the road on all of these is can you  
9 finance the thing, despite best intentions. I think  
10 that's kind of when you have this discussion about  
11 merchant power, that's what you ultimately end up with.  
12 Who are the parties? Is this a good project that might  
13 have a chance? And what we've seen is if you put together  
14 a good project, you increase the chances of actually  
15 financing it, even if it's merchant. I don't mean to say  
16 that it's impossible. It's harder to finance merchant,  
17 but not impossible.

18 Last slide.

19 I think at the end of the day for the banks,  
20 bottom line, you have to create a compelling case.  
21 They're going to look at it as an opportunity cost  
22 assessment. I have this pile of money. I can either put  
23 it in this merchant power project or I can put it in  
24 something else. Why should I put it in this nuclear  
25 project? And that's up to the sponsors to create that

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1 compelling story from the contract perspective, from a  
2 financing document perspective, from a financial  
3 viability perspective to convince the banks. But that  
4 can't be left for the end because you've got to attract  
5 the market. And at the end of the day, you know, I think  
6 you'll hear from some other people today, this ultimately  
7 results in a question of financing, but also of what are  
8 our larger goals from a policy perspective.

9 We see what was attempted to be achieved  
10 through the Energy Policy Act of 2005 with some programs.  
11 We could debate whether that was the right set of tools  
12 or not, but it was clearly an indication that the  
13 Government had to step in and do something. We're seeing  
14 it in the U.K. again right now and we'll see how that story  
15 ends up. But I think sort of the message is the market  
16 doing it on its own, right now you're probably not going  
17 to get there on a merchant plan. That doesn't mean that  
18 if we value nuclear from other perspectives that you  
19 can't through a series of tools and project structuring  
20 put together a viable project that can actually get  
21 built, financed, properly operated, be economically  
22 viable. But right now, I think with market conditions  
23 you need a little bit of help. And it doesn't mean that  
24 we throw the baby out with the bath water. It's just that  
25 one decision in isolation, if we focus on the challenges,

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1 you may come to one answer. When you look at other  
2 broad policy goals and considerations, you may come to  
3 a very different answer. And I think that the goal is  
4 to balance the two because of that.

5 So with that, I thank you for your time and  
6 attention. My contact information is here. I'm happy  
7 to answer questions.

8 MR. MATTHEWS: Since we're going to lose  
9 you to the roundtable, Paul, you've described a lot of  
10 high hurdles for getting banks to loan money into a  
11 project financed for a merchant plant and I agree with  
12 you, there are a lot of high hurdles. But given those  
13 hurdles and given the standards that the banks would  
14 apply which is really an extremely high standard, I mean  
15 you talk maybe even just reputational risk before banks  
16 are willing to lend money into a project like that.

17 In your professional opinion, if you could  
18 pull together a closing of a non-recourse project finance  
19 for a large nuclear infrastructure project to be built  
20 on a merchant basis in the United States, if you could  
21 pull that off and you had the documentation and you were  
22 prepared to close on that documentation, in your  
23 professional opinion, would there be, by virtue of  
24 accomplishing that reasonable assurance that you would  
25 have adequate funds for construction and operation?

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1 MR. MURPHY: It becomes a function of how  
2 you structure your project because I would submit that  
3 right now unless you're getting a sovereign loan from the  
4 Russians, the real way to finance these projects and this  
5 is on a global basis is that you need export credit agency  
6 financing.

7 And so when you look at how you might deliver  
8 a project in the United States, we have a wonderful  
9 institution, who -- full disclosure -- is a client of ours  
10 that is ready, willing, and able to support nuclear power  
11 projects, US Ex-Im. The only asterisk to all of that is  
12 they can only finance things outside of our borders which  
13 is kind of sad when you think about it which means that  
14 then you need -- there's not a domestic equivalent right  
15 now that can do what US Ex-Im can do.

16 And so a sad consequence of our nuclear  
17 industry over time is we probably can't build a nuclear  
18 project based on a full U.S. supply chain, soup to nuts.  
19 But what that does then is open up, that as you bring in  
20 foreign participants that you could bring ECA financing  
21 from a JBIC, from a COFACE, somebody like that who might  
22 be willing to participate in these projects and have  
23 looked at some projects that have not gone forward. But  
24 based on our discussions with ECAs, depending on how you  
25 structure the project, there is willingness to step in

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1 and finance them.

2 Again, you may have a specific case where  
3 you may have heard differently. I don't challenge that.  
4 I just know that ECAs are looking for ways to participate  
5 in nuclear projects, but then you get into their analysis  
6 of how am I going to get paid back? And that becomes a  
7 big issue. An ECA, despite its best intentions, might  
8 not be willing to take full merchant risk. That goes  
9 back to the PPA points. They may want to see that a  
10 certain percentage of off-take is through PPAs.

11 And you're shaking your head, so obviously

12 --

13 MR. MATTHEWS: Paul, you're analyzing  
14 whether or not I can do it. I'm asking you, in your  
15 professional opinion, if I can pull together a project  
16 finance where the banks are willing to loan the money,  
17 they're willing to close, and loan me billions of dollars  
18 to build my project, and I may have a DOE loan guarantee.  
19 I may have export credit agencies loaning money to the  
20 projects from a foreign government, but if they're  
21 willing to close and lend me money for my project on a  
22 non-recourse basis, do you think at that point that there  
23 would be reasonable assurance that I would have enough  
24 money to construct and operate the project, if the banks  
25 are willing to lend the money?

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1 MR. MURPHY: It depends on where your  
2 equity is coming from and what your debt equity spread  
3 is. So if you have -- you're not going to finance a plant  
4 with 100 percent debt, so let's for the sake of argument  
5 say it's 70-30 debt to equity. Then the question is who  
6 is the sponsor in the deal, where is the equity coming  
7 from?

8 MR. MATTHEWS: Are the banks going to be  
9 willing to loan me money if I don't have equity committed  
10 from rational sources?

11 MR. MURPHY: Yes, they will not be willing  
12 to loan you money.

13 MR. MATTHEWS: They would not be willing.  
14 So if they're willing to loan me the money, then I have  
15 that problem solved, right?

16 MR. MURPHY: If you have a fully-financed  
17 project, yes.

18 MR. MATTHEWS: Yes. So if I have a  
19 fully-financed project and the banks are willing to  
20 close, they're not going to close unless I have the  
21 equity?

22 MR. MURPHY: Correct.

23 MR. MATTHEWS: Because they're not going to  
24 give me the money.

25 MR. MURPHY: Because you don't have a

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1 fully-financed project.

2 MR. MATTHEWS: By definition, if I close a  
3 multi-billion dollar infrastructure project financed  
4 project, on a non-recourse basis, that means the banks  
5 have the opinion that I have enough money to construct  
6 and operate, right?

7 MR. MURPHY: Yes. The one question  
8 they're going to ask is if you say my project is going  
9 to cost \$100. Let's make up this silly financial  
10 argument. And you have a 70/30 or a 60/40 financing  
11 plan. And you can demonstrate okay, the 30 is here.  
12 It's dedicated from the equity. Maybe it all goes in  
13 first before you start drawing down on the debt and all  
14 that sounds good. The one remaining question that  
15 they're going to ask is if your project costs \$115 and  
16 not \$100, where is the extra \$15 coming from?

17 MR. MATTHEWS: Right.

18 MR. MURPHY: And if it's truly non-recourse  
19 and you don't have standby support from the sponsors, the  
20 banks will look very dimly on that because we're burdened  
21 with the history of the --

22 MR. MATTHEWS: So in that example, the  
23 banks may well require me to have \$115 secured in order  
24 to build my \$100 project.

25 MR. MURPHY: And then they're going to look

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1 for someone such as a financial advisor, not a lawyer,  
2 but a financial advisor and a technical advisor to sort  
3 of validate okay, if you have \$115 and not \$100, what's  
4 our certainty that \$115 is -- the extra \$15 is the right  
5 level of, call it, contingency or is it more?

6 And I think at that point everybody in the  
7 project has to be reasonable because as a lawyer, I'm  
8 trained to come up with what if examples until I go to  
9 sleep at night. But then you have to do sort of the  
10 risk-adjusted analysis.

11 You can always say something could go wrong,  
12 but it then becomes what's the likelihood, what's the  
13 percentage that this bad event is going to happen and how  
14 has that been built into the project? Because any series  
15 of things could go wrong. That's no different than any  
16 other project. It's just that I think because of the  
17 history of projects in the United States and heightened  
18 sensitivity for nuclear, those risks are highlighted a  
19 bit more. So the banks --

20 MODERATOR CHAZELL: Excuse me, just for a  
21 second. If you could identify yourself for the  
22 transcriptionist, I'd appreciate that.

23 MR. MATTHEWS: This is John Matthews from  
24 Morgan Lewis.

25 The banks are going to have -- they really

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1 have very low risk tolerance. They're going to have  
2 extremely high standards before they go to that closing.

3 MR. MURPHY: Yes, I mean in a perfect world,  
4 the banks might -- I don't think you're ever going to have  
5 non-recourse. You may have limited recourse with some  
6 sort of a completion guaranteed by the sponsors, such  
7 that once the money is all in and the project has been  
8 built, then there's no further recourse to the sponsors.  
9 But to have somebody with a real balance sheet that's  
10 committed until the end, to put in whatever it takes to  
11 finance it, I think is important. You know, we all make  
12 fun of OL3 in Finland, but the reality is AREVA and  
13 Siemens stuck with it until the bitter end. It's going  
14 to cost them a ton, but they stuck with it. And I think  
15 that those were real balance sheets behind that deal.  
16 That's probably what people are going to see.

17 You know, the classic developer, ten guys  
18 in a garage with an idea, isn't going to fly for nuclear.  
19 That may work in some renewables-type spaces where people  
20 get really excited. It's not going to work for nuclear.

21 MR. MATTHEWS: It sounds like the banks are  
22 going to be a lot harder on me than the NRC ever would.

23 MR. MURPHY: Probably.

24 MS. SIMMONS: Paul, could I just ask you a  
25 quick question for the staff and then I'll stop? I won't

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1 be as long as John because I'm not a lawyer.

2 (Laughter.)

3 I just -- John's point is well taken in that  
4 of course if banks have the commitment to fund that for  
5 the staff, of course, it's a very detailed analysis we  
6 can to a certain extent rely on that. Will banks make  
7 -- they can make that commitment, conditional upon  
8 receipt of a license. Is that correct?

9 MR. MURPHY: Yes.

10 MS. SIMMONS: They don't have to -- you  
11 don't have to have the license. I mean licensing clearly  
12 is the component. It was on your slides as part of the  
13 risk. But in terms of timing couldn't the banks come up  
14 with commitment letters prior to licensing and make the  
15 actual funds available upon receipt of the license?

16 MR. MURPHY: The short answer is yes. The  
17 longer answer is while that will protect them in terms  
18 of the documentation to say I'm not letting any money out  
19 the door until you get X, Y, and Z, you know, construction  
20 and operating license, whatever else you want to tack on  
21 to that, it puts a little more pressure on the -- call  
22 it the pro forma analysis for the project.

23 So getting back to the point of is it \$100  
24 or \$115, well, if you're already in construction, if  
25 you've already poured first concrete and you go out for

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1 financing, there's a little more certainty because  
2 you're already in the mix. The closer you are to first  
3 concrete, the more that they can have confidence that  
4 okay, if I'm lending for the next five years, I don't like  
5 thinking five years ahead. If I was so good at that I'd  
6 be in Las Vegas, not financing.

7 But the more spread you have between -- you  
8 know, if they were to go in for the start of licensing  
9 and you say well, it's 18 months of that, that's just  
10 going to create more uncertainty on the pro forma at which  
11 point I think the bank's natural reaction is to say okay,  
12 Mr. or Ms. Sponsor, you need to give me more of a  
13 commitment. That \$115, there's more of a delta around  
14 that \$115 than you're telling me and that \$115 could  
15 become \$130 rather easily, so I'm going to just ask for  
16 more in terms of the robustness of the equity commitment  
17 and that's where you end up.

18 MS. SIMMONS: Thanks.

19 MR. FREDRICHs: This is Tom Fredrichs from  
20 NRC and my question is when you talk about the regulatory  
21 process on one of your slides about a COL could be a  
22 condition precedent to financing, but you also said that  
23 does not preclude the banks from closing before the COL  
24 is issued. And I wonder if you could explain what you  
25 mean by closing and how that's different to actual

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1 financing?

2 MR. MURPHY: Sure. Think of it as -- I'll  
3 use the term closing and funding or closing and first  
4 draw. So you can have your full set of financing  
5 documents that go on for hundreds of pages that lawyers  
6 get paid for and bore to tears everybody else. But what  
7 you would do is you would basically say we have a deal.  
8 Here is the money and we will -- you have the right to  
9 start drawing down on this debt facility upon the  
10 satisfaction of these conditions. And so when you have  
11 this type of a structure, any time that the developer  
12 wants to draw, he has to certify that all these things  
13 have occurred. One of those things would be I've  
14 obtained my construction and operating license. So if  
15 they were to walk in and say give me my money, you would  
16 say well, do you have your COL? If not, go away and come  
17 back to me when you have it.

18 And so you can build in all these things.  
19 I think that it's nice for banks to be able to say they've  
20 closed, but the devil and the details is then but when  
21 can you actually start getting money out of the facility?  
22 And again, because of uncertainties, the more -- call  
23 them conditions subsequent to the closing which are then  
24 conditions precedent to the first draw that you build  
25 into the documentation, you're then creating more

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1       uncertainty in the deal which from actually the  
2       developer, the sponsor, owner, call him whatever you  
3       want, perspective, that uncertainty, the bankers being  
4       passive creatures that they are, will simply say I want  
5       you to put more money in the deal, because I can point  
6       to all these things that have to happen and that makes  
7       me nervous. And so it's making it probably harder for  
8       the developer to get that financing because the banks are  
9       going to be more rigorous in what they require.

10               MR. FREDRICHS: Just maybe one followup on  
11       the conditions that would have to be satisfied before  
12       money was to be drawn and you alluded to this in your talk.  
13       Is the NRC the right entity to decide what these  
14       conditions should be or is that more naturally the sort  
15       of thing that the investors and the financiers would be  
16       best placed to decide what conditions are needed?

17               MR. MURPHY: Well, I think from a funding  
18       perspective, the banks are going to do that regardless.  
19       The banks are going to just as a natural matter put a lot  
20       of stock in the regulator, whether it's the NRC or the  
21       regulator in another country, because at the end of the  
22       day the expectation from the financial community is that  
23       the regulator is the adult in the room. At the end of  
24       the day, if something is going wrong the regulator will  
25       put a stop to something.

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1           So from a banker perspective, if they can  
2 point to a competent regulator and this is an issue for  
3 countries that are starting nuclear programs. This is  
4 an issue for FANR in our UAE project. Does FANR know what  
5 it's doing? Has it been vetted by IAEA? The answer to  
6 those by the way are yes. But that's an important part  
7 of the process for the banks because at the end of the  
8 day, they don't have a huge staff of nuclear experts  
9 resident within their institutions that feel that they  
10 can pass judgment. They want to say is this project  
11 following prudent industry practices?

12           And so they're going to rely on the  
13 regulator and part of that process is the licensing  
14 process and the oversight process so that they can say  
15 when people are protesting outside of their office which  
16 happens for non-nuclear projects as well, they're going  
17 to say look, you know, we are putting stock in the  
18 regulator. We believe that they're competent and if the  
19 regulator says it's okay, it's okay.

20           So I think that the banks rely heavily on  
21 the regulator in a financing as part of the diligence  
22 process to make sure that it is a good project, whatever  
23 we choose to define that to mean. In terms of the NRC's  
24 view on financing, I think there's two considerations.  
25 One is why do you care at all? Then the other sense is

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1 well, with limited resources and you having to triage,  
2 well, there's an ordering of I can do this and then I go  
3 to the next thing, where should I spend my time. You  
4 know, again, there are a lot of people out there with  
5 great ideas, but only a small percentage of those ideas,  
6 whether it's nuclear or otherwise go forward.

7 And vetting the people that come to the  
8 table and ask for your attention at some levels would seem  
9 to make some sense just from an organizational  
10 perspective. What you throw into that basket of  
11 conditions, that's for other people to decide, but the  
12 reality is if these projects don't ultimately have  
13 financing, there is no project. So doing some sort of  
14 a pressure test, if you will, on economic or financial  
15 viability, would seem to make sense. Then it becomes a  
16 question do you have people within your institution that  
17 are able to do that. That becomes just a staffing issue  
18 and whether that's something you outsource or not  
19 becomes a second level question.

20 MODERATOR CHAZELL: Okay, I think we need  
21 to move on to the next presenter.

22 MS. CUBBAGE: Russ, before we do that,  
23 since Mr. Murphy is going to be leaving, I'd like to make  
24 sure we allow an opportunity for the folks on the phone  
25 to interject at this point if they'd like to.

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1 Is there anyone on the line that would like  
2 to ask any questions?

3 (No response.)

4 Okay.

5 MR. MURPHY: Thank you.

6 MODERATOR CHAZELL: All right, our next  
7 speaker, Mr. Edward Kee is vice president of NERA  
8 Consulting in Washington, D.C.

9 Mr. Kee. Thank you.

10 MR. KEE: Thanks, Russ. Thanks, Joanne,  
11 Anneliese, for inviting me. I apologize that these  
12 slides were some I used a couple of weeks ago in London  
13 at the WNA conference, but I think they work for what I'm  
14 going to say here.

15 I'll also say that as background, we're  
16 involved with the DOE loan guarantee program looking at  
17 regulatory and market risk, so some familiarity with some  
18 of these projects that are going on in the U.S.

19 Next slide. Next slide.

20 This slide is about how nuclear projects  
21 differ as a general matter from non-nuclear projects. I  
22 think we all know a lot about these things. Clearly, the  
23 NRC is a big player in the long development period. It  
24 takes a long time to get all of the licenses to start  
25 construction. I'm not saying the NRC is to blame for

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1 that. It's part of the process here. It's a good  
2 process in many regards, but it's a long process.

3 The pervasive regulation of safety is  
4 something that other kinds of projects don't have to  
5 face. And I guess I'll say a couple of things here that  
6 I guess caught my attention during your presentation,  
7 Anneliese, that the Design Certification, ESP process,  
8 COL process, seem to be all lumped together here. And  
9 I understand why, but if you think about the design  
10 certification track that's really more of a vendor thing.  
11 And vendors are going to be doing most of that. So in  
12 terms of Commission resources, rather than long-term  
13 funding, there's got to be a different view of that.

14 Next slide.

15 Nuclear projects have a fairly interesting  
16 cash flow. It would be nice if I put on the same slide  
17 the cash flow from, for example, a combined-cycle gas  
18 turbine project. But it's a fairly risky one and that's  
19 what makes project financing so difficult. Long  
20 development period during which a lot of money goes out  
21 the door. A long period of uncertain cash flow or value.  
22 Fixed O&M costs are significant. You've got prolonged  
23 outage possibilities out in the future. A year of a  
24 prolonged outage could be enough to cause a merchant  
25 project to have significant problems.

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1 And then you've got a long-tail liabilities  
2 and I'll stress that the fundamental economics of a  
3 nuclear project don't change because of ownership,  
4 whether it's a government plant, a regulated plant,  
5 municipal utility plant or a merchant plant.

6 Go to the next slide.

7 But we've come up with these different  
8 approaches to fund, to develop nuclear that essentially  
9 get around some of those problems. Government projects,  
10 regulated projects, which is mostly a U.S. thing, there  
11 hasn't yet been a PPA-based IPP, but that may happen maybe  
12 in the U.K.

13 And then we have the merchant projects which  
14 I agree with Paul totally that we haven't done one of  
15 those just yet, but there are some people talking about  
16 them. So the first one, the government model, in the  
17 U.S. context that means TVA. It means Santee Cooper.  
18 It means MIAG. It means Oglethorpe. It means CPS  
19 Energy perhaps. And I guess I'll say that we lumped that  
20 together under the electric utility context in terms of  
21 NRC financial qualifications, but I'll have to say that  
22 in an ideal world you believe that a government utility,  
23 a Santee Cooper or a Oglethorpe or a CPS Energy, would  
24 be able to do all the things you think they can do, but  
25 as a CPS Energy decision about the South Texas Project

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1 shows there can be some fairly abrupt changes in  
2 positions and some abrupt issues there.

3 And looking back in history, looking at  
4 things like the WPS projects, there's no guarantee these  
5 projects are going to get done or be fully funded. So  
6 there is some history here around government projects to  
7 say that they may not be as viable as they look.

8 Next slide, please.

9 And the investor-owned regulated utilities  
10 in the U.S. also appear to be sound, based on the NRC's  
11 rubric which again is a bit dated, perhaps. Looking back  
12 in history at all of the canceled plants, the abandoned  
13 plants at prudence hearings and disallowances, we know  
14 that that's not a guarantee.

15 Today, most commissions in most states have a fairly  
16 robust process to look at integrated resource planning  
17 and if you get through that process with a nuclear  
18 project, and everything goes well, you'll probably be  
19 fine, but those are some pretty big ifs.

20 Certainly, the Georgia and South Carolina  
21 models, the Baseload Review Act and the Georgia  
22 integrated resource planning process, fairly rigorous.  
23 Those decisions are fairly clear. The commitments are  
24 clear. Those projects are probably going to be just fine  
25 in terms of state regulatory treatment. But some other

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1 states are not quite so clear. They don't even have  
2 agreements yet to fund the cost of applying for a COL,  
3 much less an irrevocable commitment to fund a nuclear  
4 project. So I'd want to take exception to the NRC's view  
5 that electric utilities have no risk.

6 You can skip the PPA-based slide and go  
7 right -- you are there.

8 Merchant nuclear projects, we decided 20 or  
9 30 years ago to start reforming the electricity industry  
10 and have these new things called merchant power plants  
11 that are built based on market revenues. That's  
12 happened for some non-nuclear projects and it tends to  
13 work okay, although it hasn't worked perfectly.

14 If you will turn to the next slide -- I see  
15 this industry as having a pretty good grasp over at the  
16 far -- your right side. These markets do a pretty good  
17 job of managing dispatch of existing assets based on  
18 short-run marginal costs or bids. We tend to get that  
19 right pretty much. Short-term unit commitment, we get  
20 pretty right. Reserves, we get pretty right. But when  
21 it comes time for the short-term decisions, SRMC-based  
22 decisions to drive long-term investments, that gets to  
23 be more difficult. We bolted on capacity markets and  
24 reliability obligations and other things which kind of  
25 work, but maybe not perfectly. And to try to shoehorn

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1 nuclear into those things is pretty hard. When we're got  
2 a three-year for capacity option and you've got ten years  
3 to get the nuclear plant into operation, that gets to be  
4 a pretty difficult world.

5 I'll also say that in recent times in the  
6 U.S., we've got this issue with forced renewables. And  
7 the working of the real time dispatch and SRMC and market  
8 pricing gives rise to things like negative pricing, gives  
9 rise to reserve issues. New nuclear doesn't work very  
10 well in that. Existing nuclear has some problems,  
11 perhaps, in that even though they've got very low  
12 marginal costs and tend to be dispatched a lot of the  
13 time.

14 Turn the page.

15 As Paul said, this is really hard. We  
16 haven't done a merchant nuclear plant yet ever.  
17 Basically, getting the project risk and the long-term  
18 market risk assumed by the developer makes this really  
19 hard. And it doesn't look like it's going to be easy.

20 I won't go through the reasons why it's --  
21 why it's difficult, but as Russ said earlier, there's a  
22 chicken-and-egg problem here. If you think you do have  
23 the right economics and the right deal to make a merchant  
24 plant go, the last thing you need is to have the NRC be  
25 a problem or a delay or have some other added hurdles to

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1 that project. You'd like to be able to put it all  
2 together as you go because if the NRC adds early hurdles  
3 to a merchant project, you could end up having problems,  
4 even though the project may be an economic one.

5 How do we help merchant nuclear? Revenue  
6 certainty is certainly something we look at. The PTCs  
7 and EPAct 2005 were a good thing and the first-come,  
8 first-served aspects tended to drive people in the door  
9 early at the NRC. In other countries, in the U.K. we're  
10 talking PPAs, CfDs, carbon floor prices and other things.  
11 We haven't seen so much of that here, but we may need it.

12 The development uncertainty, certainly,  
13 the NRC Part 52 process was seen as a positive thing, but  
14 it's taking a long time and costing a lot of money and  
15 so that may not be so positive as it was seen in the past.  
16 Some countries have funded the design approval. That  
17 certainly might help. The loan guarantees and I don't  
18 know if you've mentioned this, Paul, but certainly the  
19 loan guarantees as we've envisioned them so far in this  
20 country, COL is a condition precedent to closing. We  
21 haven't closed any yet, but there's one that might. And  
22 so even if you have a loan guarantee conditional  
23 commitment, there are a lot of steps to go through before  
24 you actually get funding.

25 And I have to say this, but it's like the

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1 old joke about who gets money. If you need money, you  
2 probably can't borrow it. If you don't really need it,  
3 you probably can. And certainly the Calvert Cliffs  
4 subsidy fee story kind of supports that. When the  
5 subsidy fee is so high for a merchant plant, questionable  
6 value of having loan guarantee program at all.

7 The next slide, and I guess I don't want to  
8 spend a lot of time on this. Certainly, you guys know  
9 a lot about these projects, but as I said, the CPS Energy  
10 pullout from the South Texas Project which I'm assuming  
11 and Anneliese, help me out with this, you would have  
12 viewed that as a half merchant and half utility project?  
13 But in fact, probably the merchant side was more viable  
14 than the politically-motivated utility side.

15 MS. SIMMONS: Well, now at the beginning it  
16 was a mixed project.

17 MR. KEE: And I guess as Paul alluded to  
18 also, what we see and if you go to the next slide, we can  
19 talk about this a bit more.

20 Around the world, what we see is  
21 government-owned nuclear plant vendors who are pushing  
22 forward into project development and even ownership,  
23 the Rosatom project in Turkey being the prime example.  
24 Early days for that project, but essentially you see the  
25 vendor, a government vendor who is willing to own/operate

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1 that project, take all the risk, take all the financing  
2 as a way of pushing that equipment sale into other  
3 countries. They have access to capital as we believe.  
4 If you had a government sovereign guarantee to fund a  
5 nuclear plant, in this country it would probably be more  
6 viable than any of those other approaches, but because  
7 of the foreign-ownership rules, we may not see that here.  
8 I'm not sure that the Russians would want to build a plant  
9 here in any case, but it would be very hard for them to  
10 get into the design-approval phase.

11 But we see around the world this increasing  
12 trend towards vendors participating. I think the  
13 merchant projects in the U.S. have had a large  
14 participation of the vendor. This was seen as the  
15 flagship design build as a merchant project in the U.S.  
16 whether it's STP or Comanche Peak or Calvert Cliffs or  
17 some others. And so that vendor participation is  
18 something that ought to add to your financial credibility  
19 in a way that maybe it hasn't as a pure merchant plan.

20 That's all I have.

21 MODERATOR CHAZELL: Thank you. Are there  
22 any questions?

23 MR. FREDRICHs: This is Tom Fredrichs at  
24 the NRC. You mentioned about fund-design approvals as  
25 helping merchant plants and I was wondering what a fund

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1 design might look like.

2 MR. KEE: I'm sorry, my shorthand slide  
3 lingo didn't quite come through. It's not a U.S. thing.  
4 If you're the South Korean government and you fund the  
5 design approval of the smart reactor or the APR-1400 in  
6 your country, rather than having the developer/owner of  
7 the plant do it, that can help this industry. We don't  
8 do that here necessarily. I mean the DOE did put a lot  
9 of money into the standard-design approvals here. They  
10 didn't fund the whole thing. That's what I'm talking  
11 about.

12 MR. FREDRICH: Okay, thanks.

13 MODERATOR CHAZELL: Anybody else?  
14 Anybody on the phone bridge have a question for Mr. Kee?

15 Thank you, sir. I appreciate you coming.

16 All right, is Ms. Brockway here? Let's  
17 take a ten-minute break.

18 (Whereupon, the above-entitled matter went  
19 off the record at 9:35 a.m. and resumed at 9:46 a.m.)

20 MODERATOR CHAZELL: Okay, we're ready to  
21 go? All right, our next speaker, Ms. Nancy Brockway is  
22 owner of NBrockway and Associates in Boston and a former  
23 commissioner on the New Hampshire Public Utilities  
24 Commission.

25 Ms. Brockway.

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1 MS. BROCKWAY: Thank you very much. As  
2 we're getting ready to go, I want to give my appreciation  
3 for the opportunity to speak here. I was looking around  
4 the room hoping that I would recognize some folks because  
5 I've been dealing with nuclear power for decades. There  
6 you go. But this is not my usual forum.

7 So today, what we're trying to figure out,  
8 as I understand it, is this question of whether financial  
9 qualifications have to be established before the COL is  
10 granted or whether you can grant a COL contingent upon  
11 something. So let's strip it back and this, of course,  
12 is what others have said already, but to put it into a  
13 context why do we require them? It's not directly in the  
14 statute, but there is a concern and it's been a concern  
15 for some decades that if a builder/operator does not have  
16 financial qualifications that they may be tempted to  
17 skimp and cut corners and the result of that may be  
18 adverse to health and safety.

19 Next.

20 Now this is a little state perspective and  
21 you probably are well aware of the feelings. It's the  
22 NRC's job under the statutes to protect health and  
23 safety. We, in the states, are very painfully aware that  
24 we are branded and I think, for example, you can look at  
25 the experience in Vermont which the legislature, I would

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1 have advised them not to try to do this, but they entered  
2 into a deal with the owner of -- I think it's Vermont  
3 Yankee under which the state would have some control over  
4 whether or not that plant was re-licensed or continue to  
5 operate.

6 Well, even though the plant owners had made  
7 that deal, they then went to court and said no, we're not  
8 bound by it. I don't know where that actually ended up,  
9 but you can see that states have a reason to be leery of  
10 any suggestion that they can do anything about health and  
11 safety. You've got to do it.

12 It's also no news that today merchant plants  
13 are having big problems getting financing. I think the  
14 biggest single problem is the gas prices are low. I  
15 think gas prices will go up again. I believe in the  
16 volatility of gas prices. But the result of the current  
17 relatively low prices, and the uncertainty about shale  
18 gas contributes both to the sense that well, maybe prices  
19 will go up because we won't figure out fracking. But  
20 maybe prices will continue to stay low because it will  
21 open up floodgates of natural gas and keep the prices low.

22 So one of the things I wanted to show on this  
23 slide was in the quotations animal spirits. I've been  
24 doing a lot of thinking about what produces booms and  
25 busts and what motivates people to be entrepreneurs and

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1 John Maynard Keynes is famous for saying that "in the end  
2 it's animal spirits." We might call that the  
3 entrepreneurial urge. But if you go through a bust like  
4 the one we went through in 2008, that scares off anybody  
5 who isn't shall we say psychopathically spirited. That  
6 gradually goes away as people recognize that things can  
7 come back into a norm and there will be a reason to  
8 continue to invest.

9 Obviously, that has an impact on investors. They get  
10 nervous for a while. It also lowers customer usage  
11 because we're in a recession and that doesn't bode well  
12 for a future stream of revenue. And financiers have  
13 always been nervous about the particular risks of any  
14 given technology and nuclear power has some very well  
15 recognized risks.

16 I just want to note that it's not merchant  
17 plants alone that are having this problem. It's not a  
18 function of being a merchant plant, necessarily. This  
19 is happening even with vertically-integrated utilities.  
20 And we've seen the beginnings of rate payer uneasiness  
21 in the Carolinas and Florida about their pre-approval  
22 schemes and the amount of money it's costing and whether  
23 or not anything will come out of it in the end.

24 So this may be quixotic now. You may decide  
25 you just blow through it as being this is the type of thing

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1 that happens. My goodness, Seabrook 1 got built and  
2 there were people getting arrested there. We don't have  
3 anything like that at all now.

4 But if the public burdens increase, there is a risk if  
5 the costs go higher; if people start rebelling against  
6 this pay now and maybe get some power out of this thing  
7 later; if there are health and safety problems; if we  
8 have another Fukushima; you can understand that there are  
9 a lot of reasons why public opinion may turn.

10 So we're in a situation now where finance  
11 -- by finance, I'm talking about any of the entities  
12 -- I would have said Wall Street before, but you know it's  
13 more globalized now. Any of the entities that are there  
14 to tap to provide credit, to provide equity, are saying  
15 to the owner/operators well, we're not going to pony up  
16 our money unless we have a guarantee in the form of the  
17 combined operating license point. That's it. No  
18 conditions. We want to see the license in hand before  
19 we go forward. And as part of that, they want a dedicated  
20 revenue stream. Here's where the merchant thing comes  
21 in because, of course, theoretically,  
22 vertically-integrated utilities can always sell it to  
23 their customers.

24 I will tell you that I have dealt with  
25 Seabrook Nuclear Power Station 1 and 2 since 1983 and

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1 there were many, many periods during that time when it  
2 was not at all sure that folks would get their money back  
3 if they invested in that plant and the situation got so  
4 dire, the costs got so out of whack with the benefits that  
5 when New Hampshire finally settled its Seabrook issues,  
6 when I was a commissioner we had a huge restructuring case  
7 and we finally settled the nuclear issue by selling off  
8 Seabrook which was not necessarily the most economic  
9 thing to do. But I think New Hampshire was done with  
10 decade after decade of struggling with this issue. And  
11 of course, Public Service of New Hampshire and its owner  
12 took a shave. I think it's a pretty small shave, given  
13 the scope of the enormous costs that are being borne.  
14 But it was still a shave.

15 I want to say if you go to the last page of  
16 my handouts -- do you have the handouts? No. You'll see  
17 that one of the things I did back a long -- just to show  
18 you that I'm not to the left of The Nation magazine, as  
19 the Cato Institute would like to say, is that along with  
20 my late colleague, Tom Austin, of the Maine Commission  
21 staff, we negotiated with John Rowe to keep Seabrook 1  
22 alive and in effect negotiated a payment plan, a PPA. It  
23 was under regulation, but that's what it was. Now  
24 marginal costs were hugely above average costs at the  
25 time which allowed us both to have different views of the

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1 world and come together on a number. That may not be the  
2 case now. But just because you have vertical  
3 integration is not a lock on finance.

4 So my main message is pretty simple and it  
5 starts here. If those who are in this for a profit won't  
6 invest, why should the consumers guarantee cost  
7 recovery? For one thing, the profit seekers, because  
8 they have skin in the game, they know this industry very  
9 well. They know what the risks are. They can gauge  
10 likelihoods in ways that the public, I would argue,  
11 cannot. It gets fairly politicized in public. I can't  
12 imagine New Hampshire supporting a nuclear power plant  
13 right now even if that were to be the really most obvious  
14 choice for power. They just got soured on it. I  
15 wouldn't have necessarily have sold off Seabrook because  
16 at the time it was already built, but they would have none  
17 of it.

18 And also, note that even a decision not to  
19 put money in by a profit seeker is a choice. They are  
20 taking the risk of bearing opportunity costs and they do  
21 that knowingly and intelligently and understanding that  
22 they are making a choice. What the public sees is how  
23 the people with skin in the game vote with the dollars.  
24 So the public, except in places where there's just a  
25 tremendous political support, without reason for any

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1 kind of nuclear investment, says to itself well, hey, if  
2 they won't put money up, why should I? And if they don't  
3 think they can manage the risks, why do they think I can?

4 Now there's another issue that has come up  
5 here having to do with oh, well, gee, we're only talking  
6 about during the course of the procurement of the license  
7 and it doesn't really count because we're going to go,  
8 we're going to require financing at the time that ground  
9 is broken. And I would argue that first that's too late  
10 because some decisions will already have been made. And  
11 the issue of skimping can occur at any place along the  
12 line. So it's not a guarantee, even if you could argue  
13 that it was a ministerial act to say oh, that's the  
14 financing.

15 One of the things I had to do when we were  
16 on the Commission in New Hampshire we had securitization  
17 of the stranded costs. And I'm holding up my fingers to  
18 make about an inch and a half or two inches thick of paper.  
19 Every time a clause in that securitization agreement with  
20 the legislature changed, we had to read the entire thing.  
21 I think my General Counsel ended up having to wear glasses  
22 after that because the fine print makes a huge  
23 difference. And these terms are fought over. This is  
24 not a simple thing. You can't just rubber-stamp it.  
25 You can't just say well, if you have Model XY, then you're

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1       okay. Because there is no Model XY for one thing.

2               Then the other thing is from a consumer  
3 perspective, well, why not close it the other way around?  
4 Why is it that the consumer has to go first and the public  
5 has to go first and why can't we make the license  
6 contingent on the financing instead of them forcing us  
7 to make the financing contingent on the licensing?

8               So in a way, this comes down to a big game  
9 of chicken. Who is going to blink first? I would argue  
10 that the NRC should not blink because this is a health  
11 and safety issue. It doesn't matter what the  
12 -- the fact that President Obama wants a -- I don't know  
13 what the phrase is, but he likes nuclear power. He wants  
14 all different sources of power. The fact that some  
15 administrations have been very bullish on nuclear power,  
16 some administrations have been leery of nuclear power,  
17 it doesn't matter. It has nothing to do with energy  
18 policy.

19               The NRC also is not charged with making sure  
20 that people can invest in nuclear power and get a lot of  
21 money back. I mean that's fine if it happens, but that's  
22 not the charge of the NRC. The charge of the NRC is  
23 health and safety, among these other things.

24               I would also say that there are avenues for  
25 finding out the willingness of taxpayers to support

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1 things that are uncertain and many of them have been  
2 tapped, loans and loan guarantees, the whole insurance  
3 issue, and then the securitization which has been almost  
4 entirely a legislative action. In fact, I can't think  
5 of a state where a commission -- there may be one state  
6 where a commission went forward without legislative  
7 direct authority. But anyway, very, very democratic  
8 decision to impose these risks on consumers.

9 Now you can go and ask for more of that if  
10 you need it and if you think that energy policy requires  
11 it. Or the industry needs to be kept alive during down  
12 time or something like that. But in the end, if the folks  
13 with skin in the game will not finance without these kind  
14 of guarantees from consumers, the NRC should not either.

15 MODERATOR CHAZELL: Thank you, ma'am. Do  
16 we have any questions for Ms. Brockway?

17 MR. FREDRICHS: This is Tom Fredrichs from  
18 the NRC. And I think you've pointed out some of the costs  
19 that might fall on ratepayers in these sorts of projects,  
20 but I'm wondering how that -- the consumer or the  
21 taxpayers in the context of a merchant plant where they  
22 borrow money somewhere, perhaps from some government  
23 agencies, but they make it or break it on their own  
24 performance and if it goes broke, there's no particular  
25 consumer who has to pick up the pieces. So -- or is that

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1 maybe too simplistic point of view? So the question is  
2 the concern for the consumer and ratepayers how much does  
3 that translate into the merchant plant model where we  
4 think consumers don't pay anything unless the project is  
5 successful?

6 MS. BROCKWAY: That is a terrifically  
7 important question and one that unfortunately is fairly  
8 complex in a restructured electric industry. So I'm  
9 assuming that we're talking about a merchant plant that  
10 wants to build and sell into a competitive wholesale  
11 market, an RTO, an ISO, something like that, perhaps  
12 even into a competitive retail market.

13 And it is true that absent a long-term  
14 contract, the person who is putting up the money for the  
15 plant is basing his or her expectation of return on what  
16 the market is going to be for power in that marketplace.

17 One thing that I don't think we have yet  
18 wrestled to the ground in electric utility restructuring  
19 is the problem of reliability and planning. It is not  
20 necessarily that a merchant plant will be left without  
21 support if it can't make the money back in the market.  
22 And to give you a small example, there are what's called  
23 must-run plants. They're not nuclear -- well, actually,  
24 some are nuclear, but in the Northeast.

25 Since the FERC started to deregulate the

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1 wholesale market, they have had to try one scheme after  
2 another to give those plants enough support to keep  
3 running because they are in load pockets. And if they  
4 tried to get what the marginal costs of those load pockets  
5 since it wasn't priced that way, they wouldn't be able  
6 to stay alive. So they've been subsidized by  
7 ratepayers.

So I would say that it's not  
8 a clean situation if the financier takes all the risk.

9 I'm trying to think of another analogy, too.  
10 I may bungle this coming out, but let's say you have a  
11 chemical plant and it sells into the open market and sells  
12 at a risk. And it's regulated for health and safety. I  
13 don't know that anybody argues, well, we should lower our  
14 standards on the health and safety because these poor  
15 people have to make a buck in the market and we see the  
16 market changing. In fact, this plant may go out of  
17 existence. Part of it is a view of mine of fish or cut  
18 bait. Either you really have a deregulated wholesale  
19 market where people actually do take the risk or you  
20 don't. I don't think we do. I'm dubious about whether  
21 we'll ever get there. But because of that view, I can  
22 see state and federal agencies, economic regulatory  
23 agencies, taking steps in various ways to make sure the  
24 lights stay on and as a result it's not a pure merchant  
25 play.

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1 MODERATOR CHAZELL: Is there anyone on the  
2 bridge line with a question?

3 Anneliese?

4 MS. SIMMONS: Hi. I'm Anneliese Simmons.  
5 Thanks for coming to speak to us. I'm glad you made it.

6 Just a couple of questions. You made a  
7 point that I think was an important one, that the NRC is  
8 charged with regulating health and safety. We're not an  
9 economic regulator. I think that's an important point  
10 in terms of this discussion that we maybe haven't really  
11 focused on enough. So I appreciate you making that  
12 point.

13 I guess my question is if we were to -- from  
14 a policy perspective, there is a perspective that our  
15 rules and regulations do disadvantage. We have a  
16 barrier to entry. We have a barrier to regulation  
17 because we have different requirements for merchant  
18 plants. But you've talked about how that might be  
19 necessary given the fact that there's always the risk of  
20 cutting corners if there's insufficient funds.

21 In your experience, I know you came from the  
22 utilities side of things, the regulator side of things,  
23 when states are analyzing financing over time, there have  
24 been situations where you've had financial conditions or  
25 conditional approvals over time. I know it's not quite

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1 the same situation, but if that type of a framework were  
2 to work for a merchant plant, what might be some of the  
3 things that we would need to consider? Is there anything  
4 we can learn from the utilities side that we can apply  
5 to the merchant side?

6 MS. BROCKWAY: I'll have to think about  
7 that for a sec. There are a number of piece parts in the  
8 question. I'm trying to think of the examples of the  
9 regulatory side imposing conditions. It's certainly  
10 the case that with any of these pre-approval ratepayer  
11 schemes, basically the applicants have to make a case to  
12 the Commission that it's worth putting the risk on the  
13 ratepayer because here's the risks and here's the  
14 benefits and they're going to get the benefits and they  
15 outweigh the risks.

16 So let me put it this way, if a state  
17 commission learns that finance has been withdrawn or is  
18 severely conditioned, it instantly worries that the  
19 plant will never get built. And in fact, that's what  
20 happened with Seabrook 1. Seabrook 1 stopped  
21 construction not because people were marching at the  
22 plant, but because Wall Street said this is ridiculous.  
23 We're not putting more money in. Actually,  
24 what the state did was negotiate a Purchase Power  
25 Agreement, what we did, and I think other states did

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1 something similar, too. So we took on the risk. But it  
2 was a knowing taking-on of the risk. And it was -- I  
3 think it was because legislatures don't live by the rule  
4 sunk costs are forever sunk where entrepreneurs have to  
5 do that. You can't go oh, gee, we put so much money into  
6 it, we have to keep putting more money into it. They  
7 don't think that way, but legislatures do.

8 What can states provide for the NRC? I  
9 guess in summation of what I started out with, it's that  
10 states do pay very close attention to what Wall Street  
11 says and if Wall Street is not in the project, that raises  
12 alarms right away that there's something fundamentally  
13 wrong with the project. Beyond that, states have such  
14 a different requirement. We have health and safety  
15 jurisdictions, except not in the case of nuclear.

16 MS. SIMMONS: Right.

17 MS. BROCKWAY: So in these other areas we  
18 would be concerned about whether or not sufficient  
19 environmental controls were put in place, whether or not  
20 corners had been cut on the construction, for example,  
21 the traffic going in and out during construction or any  
22 number of things that could affect the public adversely.  
23 But that's because that's all bound up in the same kernel.  
24 But having said that, if Wall Street steps back, then that  
25 is seen immediately as a red flag.

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1 MS. SIMMONS: Thanks.

2 MODERATOR CHAZELL: All right, thank you,  
3 ma'am. Appreciate it.

4 MS. BROCKWAY: Thank you.

5 MODERATOR CHAZELL: All right, we'll go to  
6 our final speakers this morning, Mr. Mark McBurnett,  
7 Chief Executive Officer and Chief Nuclear Officer of  
8 Nuclear Innovation North America, LLC; and Mr. John  
9 Matthews, a partner in the energy practice at Morgan  
10 Lewis and Bockius, LLP in Washington.

11 MR. MCBURNETT: I've never seen the room  
12 from this side of the table, so it's a rare opportunity.

13 Good morning. It's always a pleasure to  
14 have another opportunity to meet with the Nuclear  
15 Regulatory Commission and continue our efforts towards  
16 obtaining a combined license for South Texas 3 and 4.

17 As an introduction, I'm Mark McBurnett, the  
18 Chief Executive Officer for Nuclear Innovation North  
19 America. I brought a few others with me to the table this  
20 morning. Mr. Greg Gibson from UniStar, Jeff Simmons  
21 from Luminant. I should know him, John Matthews, he's  
22 my counsel, Morgan Lewis, and he's been pretty active in  
23 our financial qualifications review, so he's here  
24 assisting me and then Ellen Ginsberg from the Nuclear  
25 Energy Institute.

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1           My slides are fairly detailed. They  
2 represent really a repeat of what I've already put on the  
3 docket and we've been discussing this over a year plus  
4 with the staff. There's nothing really new in there.  
5 In fact, it reflects also the letter I sent to Bill  
6 Borchardt earlier this year, sort of instigating this  
7 dialogue. So I'm not going to spend a lot of detail on  
8 the slides. I'll spend most of my time really just from  
9 the executive summary and doing a quick sort of brief.  
10 As part of my 15 minutes, I want to give my friends at  
11 the table here a chance to speak.

12           I also mentioned, I haven't heard  
13 confirmation of who is actually on the phone, but a number  
14 of folks in the Small Modular Reactor community also  
15 indicated to me that they were going to be calling in  
16 today and may have some things that they would like to  
17 add at either this or at the end of the general  
18 discussion. It's keenly an issue of interest to them  
19 also.

20           I would like to say Nuclear Innovation North  
21 America, of course, is an entity that was created by NRG  
22 Energy and Toshiba, the two owners, to develop South  
23 Texas Project 3 and 4. The units, once constructed, will  
24 be operated by STP Nuclear Operating Company, the  
25 existing operating company that operates South Texas 1

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1 and 2.

2 To date, NINA has a large investment in the  
3 project, moving forward with a COL. The technical  
4 review is largely complete. There's a few, just a  
5 handful of items that are still set to run to completion.

6 Clearly, our initial circumstances in the  
7 project when we started we were moving towards  
8 construction as quickly as possible, based on the current  
9 market conditions at the time. Circumstances have  
10 changed. Decisions have been made that based on current  
11 market conditions will continue to pursue the combined  
12 license and then once we have the combined license, when  
13 market conditions are appropriate for the investment, to  
14 warrant the investment, then the project would be able  
15 to attract the right investors and move forward into  
16 construction. Like I said, circumstances  
17 changed and I have absolute confidence circumstances  
18 will change again and opportunities will arise.

19 Looking at the overall schedule for how  
20 long, we started this project in 2006 with an initial --  
21 when we submitted in 2007. If I look at it, add that  
22 whole time line together and say from the time you start  
23 to the time you get online with power generation, you're  
24 in the 10 to 12-year range. That's a long time in a  
25 merchant market, but by allowing us to move forward, get

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1 a combined license, have it ready, market conditions  
2 become ripe and we're able to move forward, we shorten  
3 that window at least by half. more like a five-year  
4 turnaround to putting power on the grid and returning  
5 money to the investors.

6 The background part of it, the plants are  
7 proposed to be built on a project-finance model. We've  
8 heard about that earlier today with non-recourse  
9 financing. That really means that the lenders are going  
10 to require adequate assurance of funding before the plant  
11 starts and that the funding that's funding for both  
12 construction and its adequate return in operations, they  
13 want to get repaid. So they're going to put a very  
14 rigorous standard on us for ensuring that they have  
15 everything in hand necessary to get the whole project  
16 completed and online and develop a return.

17 We have rigorous requirements for equity,  
18 for contingencies, working capital, decommissioning  
19 funding, debt reserves to pay the debt service and so  
20 forth. All those things have to be considered by the  
21 lenders before we ever go to financial close. And at  
22 financial close, funds will have to either -- everything  
23 will have to be paid or committed, funds in hand or really  
24 strong commitments for the loans to complete the project.

25 What that really tells us as we look at it

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1 is what we will have to endure from the lenders to have  
2 funding for this project far exceeds reasonable  
3 assurance. It's a standard that we'll have to meet  
4 that's higher than reasonable assurance that we had --  
5 before they'll ever loan us the funds and close, to allow  
6 us to start construction.

7 And based on what we've proposed is to be  
8 allowed to use a license condition. It would really  
9 require that that financing close happened prior to any  
10 construction in this case that's -- the definition is in  
11 the rules, to start a construction and that that would  
12 provide reasonable assurance. That assures that the  
13 plants -- makes sure there's health and safety to the  
14 public, safety to the plant, that the -- the plant is  
15 never built if it's very financed, never meets that  
16 license condition.

17 Looking at NRC -- has a broad, legal  
18 authority to decide what financial qualifications are  
19 appropriate. It's not really NRC's role to decide the  
20 financial wisdom of a project. That decision is left to  
21 the economic sector. The NRC focuses on health and  
22 safety of the public and that can be ensured with a  
23 license condition such as we proposed.

24 There is precedent with the NRC using this  
25 license condition. It's in the same circumstance really

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1 for fuel facilities. It's not an untried process. We  
2 really see this as really a process policy question where  
3 the NRC needs to revise the process and the policy  
4 reflecting really the current business environment.

5 That's kind of my statement in a summary and  
6 I'm going to go and give each of my friends here a chance  
7 to add their little bit to it and I will just start over  
8 here on the left with Greg, just because you're on the  
9 end.

10 MR. GIBSON: Thank you, Mark. I'm Greg  
11 Gibson, president and CEO of Unistar. Unistar supports  
12 South Texas Project and the Nuclear Energy Institute's  
13 proposals to finance -- excuse me, to address financial  
14 qualifications issues through license conditions,  
15 consistent for NRC precedent for other non-combined  
16 licenses. However, the complexity of this issue  
17 requires a full dialogue and broad participation.

18 We recommend that the NRC conduct workshop  
19 on the FQ issue that includes participation by the  
20 Department of Energy and lenders and others such as  
21 credit export agencies which we heard from the first  
22 presenter. Workshop format would allow more direct  
23 interaction and active participation which we are very  
24 limited as Mark says, and I have to relinquish to our  
25 others.

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1                   However, we do appreciate and empathize  
2 because South Texas is ahead of us in the licensing  
3 schedules. This is a very ripe matter to get additional  
4 guidance and it's very important to have it done  
5 expeditiously. Thank you.

6                   MR. MCBURNETT: Jeff?

7                   MR. SIMMONS: I am Jeff Simmons. I'm the  
8 Director of Development for the Comanche Peak 3 and 4  
9 Project at Luminant. Luminant also supports the STP  
10 position. We're appreciative of this forum and this  
11 opportunity to speak.

12                   A license condition similar to that that was  
13 proposed by NRG is one way that merchant generators can  
14 demonstrate financial assurance in accordance with the  
15 regulations. And we see that the standard under 10 CFR  
16 50.33(f) is analogous to that of 10 CFR 72.22(e) under  
17 which the Commission has held that a license condition  
18 is an appropriate tool for the use of demonstrating  
19 financial assurance.

20                   Appendix C provides additional guidance to  
21 applicants on what additional information the staff may  
22 request in the context of an application for construction  
23 permits or combined licenses. As distinguished from  
24 more prescriptive NRC regulations, the kind and depth of  
25 information described in this guide is not intended to

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1 be rigid and absolute requirement and in determining an  
2 applicant's financial qualification the Commission will  
3 require the minimum amount of information necessary for  
4 that purpose.

5 Under C.2, newly formed entities are  
6 expected to show sources of funds and describe the legal  
7 and financial relationships with those sources. If  
8 those sources and relationships can be shown at the time  
9 of application as in Luminant's case, no license  
10 condition should be necessary. If those sources and  
11 relationships are yet to be identified at the time of  
12 application, an appropriate license condition can be  
13 fashioned such that the staff's acceptance criteria can  
14 be satisfied post-issuance of a CP or a COL but prior to  
15 initiation of construction. Thank you.

16 MR. MCBURNETT: I was going to ask if we  
17 have any of the -- I know several of my folks on the  
18 -- peers on the -- they planned to be on the phone line.  
19 I wanted to see if any of those had a comment that they  
20 wanted to make at this point?

21 MR. HASTINGS: Yes, this is Peter Hastings  
22 with Babcock & Wilcox. We are developing the design and  
23 license application for design certification for the B&W  
24 mPower Small Modular Reactor. Babcock & Wilcox also  
25 fully supports the industry view and the South Texas

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1 presentation from the perspective of a  
2 Small Modular Reactor vendor, we want to make it clear  
3 that this issue is not unique to South Texas. We are  
4 approaching an environment where we're pursuing markets  
5 that are not based on the traditional regulated model  
6 where our goals include repowering coal sites and  
7 nontraditional implementations. It seems likely that  
8 we will encounter more merchant opportunities, not less,  
9 going forward.

10 As we pursue carbon reduction, an increase  
11 in U.S. production for both domestic consumptions and  
12 export, we believe it's incumbent on the regulator not  
13 to either create or propagate artificial barriers to this  
14 merging market. We're working very closely with several  
15 utilities one of which is First Energy. First Energy's  
16 representative wasn't able to join us today because of  
17 a conflict, has indicated they also fully support our  
18 comments and fully supports a license condition to  
19 establish financial qualification prior to construction  
20 as long as it allows flexibility and what method is used.  
21 That concludes my remarks. Thank you.

22 MS. CUBBAGE: Thank you, Peter.

23 MR. McBURNETT: Any others on the phone? I  
24 was going to ask Ellen to bring up the overall industry  
25 perspective.

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1 MS. GINSBERG: Thanks, Mark. And I  
2 appreciate the NRC staff's willingness to provide this  
3 opportunity to have this discussion. The industry has  
4 been discussing this among themselves and among the  
5 various participants for quite some time, so this is  
6 really as someone else said, not only ripe, but perhaps  
7 even overdue.

8 I think we're going to have far more  
9 detailed discussion when we get to the roundtable, so  
10 I'll hold a lot of my points until that time. But I think  
11 it's critically important that the Agency recognize that  
12 there are no real legal impediments here and this is a  
13 policy issue. The Agency is often -- it's often  
14 suggested that the Agency stands in the way of licensing.  
15 The Agency shouldn't be in a position of picking winners  
16 and losers. The Agency should be doing what under the  
17 PGE case that the Supreme Court said it should be doing  
18 which is looking at public health and safety.

19 And to the extent that no plant will be built  
20 ever until the financing satisfies the Agency, I think  
21 you've satisfied your public health and safety  
22 obligation. So important from our perspective to  
23 segregate the policy issues from the raw legal issues and  
24 we think that you can solve both with very reasonable,  
25 but rigorous response here. So thank you.

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1 MODERATOR CHAZELL: Just a question, did  
2 you get Ms. Ginsberg's name there? You did? Okay,  
3 good.

4 MR. MCBURNETT: The last thing I would ask,  
5 John, if there's anything else I didn't add into all that  
6 I needed to?

7 MR. MATTHEWS: I guess I would just make one  
8 point about the -- there is one significant precedent and  
9 it's the Private Fuel Storage case and it highlights two  
10 important issues, one that Jeff already made which was  
11 that the standard in that case was under Part 72 and  
12 72.22(e), demonstrate reasonable assurance of obtaining  
13 funds for construction. The Commission in that case  
14 said this will protect the public health and safety.  
15 There were intervenors that argue the thing is they'll  
16 never be able to satisfy the condition. They're never  
17 going to be able to get the financing. They had all kinds  
18 of arguments about why the financing wasn't likely to  
19 happen. And the Commission said well, you prove our  
20 point. If they don't get the financing, they will never  
21 construct, they'll never be a safety issue. The public  
22 health and safety is protected.

23 Now in that case, the Commission did point  
24 out that there were additional requirements applicable  
25 to Part 50 reactors and those requirements are

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1 information requirements in Appendix C and the kind of  
2 license condition that NINA has proposed, that is,  
3 requiring the closing of a project finance which we've  
4 heard today is a very high hurdle, very difficult thing  
5 to accomplish. The fact of the matter is when you have  
6 the documentation ready to close that project finance,  
7 you will have all of the detailed information regarding  
8 the sources of funds for construction that could ever  
9 have been contemplated by Appendix C. You will have much  
10 more than what was ever contemplated by Appendix C. You  
11 won't be in a situation where the plant begins  
12 construction and then there is a regulatory issue about  
13 whether or not Wall Street is willing to finance unless  
14 ratepayers are willing to sign PBAs and things like that.  
15 The banks are not going to loan the money unless all  
16 that's lined up up front with contingencies beyond the  
17 cost estimate. And we've heard here that it's possible.  
18 You could go out and get financing. You could probably  
19 loan commitments before you have a COL. It's just about  
20 how much it's going to cost.

21 And sure, if I don't need financing, if I've  
22 got all the money in the world and I'm willing to pay  
23 whatever, I can do anything. But it puts a substantial  
24 burden on merchant applicants if you impose that  
25 requirement prior to issuing the COL. Whereas, if

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1 merchant applicants have the COL in hand, then they're  
2 in the position to go to market to pull the financing  
3 together on the most reasonable terms to get the best  
4 terms and seize the opportunity to build a plant when that  
5 opportunity is ripe.

6 MR. MCBURNETT: That's our presentation.

7 MODERATOR CHAZELL: Okay, do we have other  
8 questions, comments?

9 MR. MAYFIELD: I'd like to pose one, if I  
10 could. We've been talking a lot about the license  
11 condition approach, the PFS, LES approach and the  
12 condition that you've proposed. Is this a one size fits  
13 all? We've heard from Peter Hastings, the SMR community  
14 has an interest, different interests from different  
15 utilities. So from NEI's perspective is this a one size  
16 fits all, there's some generic license condition  
17 language? Or is this a rulemaking? What's the right --  
18 assuming the Commission decided to go forward and do  
19 something, what's the right something?

20 MS. GINSBERG: I think this can be solved  
21 in multiple ways. I think you could create a generic  
22 license condition. I think rulemaking takes a very long  
23 time, unfortunately. It's a two-year process.

24 MR. MAYFIELD: Don't hang up on that one.  
25 What's the right ultimate fix we can deal with things --

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1 MS. GINSBERG: Sure.

2 MR. MAYFIELD: Assuming the Commission  
3 decided to embark on something, there are short term  
4 fixes, then there's a longer term. What's the right way  
5 to fix this?

6 MS. GINSBERG: I'll condition my answer  
7 along the lines that you've suggested and say assuming  
8 that we could have a very expedited rulemaking, if that's  
9 possible, I think there is a potential to address this  
10 through rulemaking. I don't know that I can give you the  
11 answer here because I haven't had time to meet with my  
12 colleagues and hammer out the language, but I think the  
13 suggestion would be in the rulemaking that the Agency has  
14 discretion. There's no question that the Agency has  
15 discretion. And so embody that in the rulemaking so that  
16 we don't have a situation where the Agency is the  
17 impediment when all other requirements are met.

18 MS. SIMMONS: Thanks for coming and  
19 speaking to us today.

20 Is it the industry's position that  
21 financial qualifications and financial distress have  
22 nothing to do with health and safety?

23 MR. MATTHEWS: No, I think our position is  
24 is that you can protect public health and safety with  
25 appropriate license conditions.

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1 MS. SIMMONS: What about this concern and  
2 it's actually experience we've had in the past. We  
3 provide a license. You obtain funding afterwards, but  
4 the funding isn't necessarily particularly strong. Is  
5 there actually guarantee -- you've said a number of times  
6 that there would be a guarantee that the plant would never  
7 be built if there were insufficient funds. But isn't it  
8 true that we have to consider the fact that the plant  
9 construction may continue in some inadequate fashion if  
10 there was insufficient financial qualifications?

11 MR. MATTHEWS: I think that the NRC is  
12 always dealing with this issue of financial  
13 qualifications on an on-going basis. And if you ask all  
14 of your applicants to demonstrate that there's no risk  
15 that they're ever going to have any financial problems  
16 for the 60-year or 70-year life, 10-year construction,  
17 60-year life of a plant, it would be an impossible hurdle.

18 So I think what the Agency needs to do is  
19 establish a reasonable hurdle at the outset, which is the  
20 reasonable assurance requirement and then you have  
21 inspection and enforcement activity to monitor. We've  
22 had licensees of operating nuclear power plants go into  
23 bankruptcy. This Agency has never encountered a nuclear  
24 safety issue that I'm aware of that can be directly linked  
25 to those kinds of financial distress.

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1 MR. MCBURNETT: Ellen, did you have  
2 something you wanted to add to that?

3 MS. GINSBERG: Anneliese, I think it's  
4 really important to recognize that the financial  
5 qualification issue is really subsidiary to everything  
6 the Agency does. So your funding is going to perhaps be  
7 an indicator, but not necessarily the determinative  
8 factor. It's your performance and the Agency has  
9 on-site resident inspectors. You have all manner of  
10 inspection activities. You've got all manner of  
11 reporting requirements.

12 So to the extent that there's thin, and I'm  
13 not sure I agree with that. I'll just use your term, thin  
14 financial backing, it's going to show up very quickly and  
15 the Agency is not shy about moving quickly in enforcement  
16 space, in the ROP, etcetera. So I am a little concerned  
17 that we're elevating financial qualifications above  
18 public health and safety. The Agency's real mission is  
19 carried out through not just financial qualifications,  
20 but through all of its inspection and enforcement and  
21 other analytical programs that ensure public health and  
22 safety is not only monitored, but established.

23 MS. SIMMONS: So do you think we have enough  
24 information though that says that financial distress has  
25 never impacted health and safety? I'm not quite certain

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1 that everyone would be in agreement that we would quickly  
2 see those impacts. I think the staff's concern is that  
3 that is somewhat cumulative.

4 MR. MATTHEWS: I think this was a question  
5 that was asked and the Agency struggled with in the  
6 mid-1990s when it was facing the specter of industry  
7 restructuring and that was a paradigm shift for this  
8 Agency. There were a lot of people within the Agency  
9 that had great concerns. There were people in the  
10 industry who said it can just never happen, nuclear  
11 plants can't be operated on a merchant basis. When  
12 California deregulated, the only plants that stayed  
13 regulated and rate based were the nuclear plants because  
14 there were people who said you just can't do it. It can  
15 never be done.

16 Right now, close to half of the operating  
17 plants in the United States are merchant plants. And I  
18 would challenge you to go do the analytics. Is there a  
19 correlation between safety performance that -- I'm  
20 sorry, is there a correlation in safety performance  
21 between being a merchant plant and being in  
22 cost-of-service? And I am pretty sure you'll find that  
23 there is not.

24 Every time this Agency has done studies on  
25 financial issues, when Ivan Selin was Chairman, he

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1 challenged the staff, do plants have adequate resources?  
2 Staff did studies. The conclusion was there are plants  
3 that have the lowest budgets that are in the top quartile.  
4 There are plants that have the highest O&M budgets that  
5 are in the bottom quartile in safety performance. The  
6 staff never could find a correlation between the dollars  
7 and safety performance.

8 And I think that the answer in the 1990s,  
9 the reason the NRC got comfortable with these merchant  
10 plants was that it has the inspection programs in place.  
11 It has the ROP. These plants were not operating in a  
12 vacuum.

13 MS. SIMMONS: Can I just ask one last  
14 question? It's related to the proposed license  
15 condition that has come from the industry. How would we  
16 build a license condition if you were unable to identify  
17 sources of funds, number one? Or do you suggest that the  
18 license condition be based on simply identifying sources  
19 of funds without analyzing the credit worthiness or any  
20 other analysis related to the sources of funds?

21 MR. MATTHEWS: Can we throw Slide 8 up on  
22 there?

23 And I'm not saying that there's one size  
24 fits all. We've moved to Slide 8 from the NINA  
25 presentation. I can see nobody can read it anyway.

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(Laughter.)

I'm not suggesting that one size fits all, but NINA's proposed size here that I don't understand how anyone could take issue with it. This proposed license condition is a project finance that involves at least 50 percent of the loans coming from the United States Government. Okay?

So if this Agency doesn't trust that the Department of Energy guaranteeing a loan or the U.S. finance bank are not going to loan billions of dollars to a nuclear project without following the DOE regulations which we cite in our presentation that set standards for the project finance, we've built into this license condition credit quality terms for -- in order to close the project finance, we're going to have a requirement to have a working capital line. It will have to come from a financial institution. So when we show those documents this is our X-hundred million dollar working capital line, you'll see the documents, you'll see the financial institutions. The standard in this condition is that the financial institution has to have a minimum credit rating, above-investment-grade credit rating. That project finance is going to require either committed capital that's equity that's already been paid in or cash, I don't want to have a cash trap or committed

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1 equity from corporations that have a certain credit  
2 rating.

3 The credit standard we have in the condition  
4 is an investment grade credit rating. So you're going  
5 to have committed capital from -- it doesn't really  
6 matter. Why do I have to identify who it's going to be?  
7 Do you really care whether it's Chase, JPMorgan Chase or  
8 Citi that's going to be providing my working capital  
9 line? As long as they meet minimum credit standards.  
10 And can't you trust the United States Government to make  
11 sure that this project finance is going to fly? I mean  
12 especially when the United States Government is going to  
13 be standing behind billions of dollars, guaranteeing  
14 that those funds will be repaid.

15 MR. MAYFIELD: I think you're getting to  
16 the root and I don't want to dominate this, but I think  
17 you're getting to the root of my question about is this  
18 a one size fits all? And so you suggested a license  
19 condition, would that apply to everybody? Is it a  
20 variance that we would need to discuss? So I think --  
21 Anneliese and I were talking just at the break. I think  
22 from the staff's perspective, there is generally a notion  
23 that we need to engage the Commission with this as a  
24 policy matter. We now have to frame that policy issue  
25 to put in front of the Commission. Just going up and

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1 saying oh gee, wouldn't you like to decide on this?  
2 Well, we need to frame for the Commission what are the  
3 questions and what are proposed remedies.

4 Is this the same issue for the SMR? SMRs  
5 are sort of my bailiwick. David has got the large Light  
6 Water Reactors. Is this the same issue? Is it a variant  
7 on the issue? What would be the remedy? Do we simply  
8 characterize, Anneliese, with what would be the  
9 characteristics of an appropriate license condition?  
10 So that's the dialogue that we need to start having to  
11 understand what, if anything, we would ultimately go to  
12 the Commission with.

13 And again, right now, my level, there's an  
14 expectation we need to put this before the Commission.  
15 What's "this"? And that's the struggle -- not struggle,  
16 that's the question we're starting to deal with. I don't  
17 think it serves anyone very well to go up with a specific  
18 proposed license condition if that's really only going  
19 to satisfy the interests of one entity.

20 MS. GINSBERG: Can I comment?

21 MR. MAYFIELD: Please.

22 MS. CUBBAGE: Actually, before you do, I'd  
23 just like to say this might be a good opportunity if  
24 there's others that want to join the discussion, rather  
25 than to limit it to just those at the table.

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1 MODERATOR CHAZELL: Sure, yes. I was  
2 thinking we move into the roundtable at this point.  
3 We've already had our break.

4 MS. CUBBAGE: You can go first.

5 MODERATOR CHAZELL: Before we start that  
6 though I'd like to say thank you for your presentation  
7 and thanks to all of you and we'll continue to dialogue  
8 as Amy suggests, but open it up to everybody who wants  
9 to speak.

10 MS. CUBBAGE: We do have one.

11 MS. BROCKWAY: Hi, Nancy Brockway again.  
12 Several different things have been triggered by the  
13 presentation which was very thorough. One is I'd like  
14 us to recall the Davis-Besse plant where, in fact, there  
15 was almost -- there was nearly a very severe accident  
16 because of lack of financing and that was something that  
17 was documented by the NRC. And that was in 2002 or '03,  
18 I think.

19 I wonder whether we should put a whole lot  
20 of faith in the ratings agencies. Since 2001, there have  
21 been instance after instance after instance in which  
22 they've just gotten it wrong including the downgrading  
23 the credit worthiness of the United States. And then  
24 finally, that point about budgets on O&M is very  
25 interesting. My take from that is quite different which

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1 is that -- not licensure, sorry. Supervision and  
2 correction as a practice of ongoing is not going to be  
3 successful and that what you really need to do is get it  
4 set up in advance so that you're not going to have those  
5 types of problems and that the incentive for the builder  
6 and the operator is going to be to do it right. And I  
7 actually think that Wall Street helps in getting us  
8 there.

9 MS. CUBBAGE: Thank you.

10 MS. GINSBERG: I'll pick it up.

11 MR. REPKA: Hi, this is David Repka. I'm  
12 with Winston and Strawn. I wanted to respond a little  
13 bit to the idea that I think Anneliese Simmons introduced  
14 in the last comment or just commented on and that's really  
15 the question of the role of financial qualifications  
16 relative to the issue of will there ever be a case where  
17 a lack of funding or insufficient funding will impact  
18 safety.

19 I think that that's not a proposition that  
20 the financial qualifications rule needs to solve. The  
21 financial qualifications rule and the review at the time  
22 of licensing is never going to address the Davis-Besse  
23 situation and I don't think that's its role.

24 I think the question of whether or not there  
25 is adequate performance and whether adequate funding is

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1 a causal factor in performance decline is something that  
2 licensees and the NRC and its regulatory program address  
3 every single day. And it's just part of the regulatory  
4 program as I think Mr. Matthews and Ms. Ginsberg already  
5 alluded to.

6 And I think it's important when we look at  
7 financial qualifications review to go back and look at  
8 the whole process of the way it was set up in the 1980s  
9 and '90s with respect to electric utilities. Electric  
10 utilities weren't exempted from financial qualification  
11 requirements. They were exempted from a detailed  
12 financial qualification review. And why was that? It  
13 was because there was an assumption being made that cost  
14 of service rate regulation would assure sufficient  
15 funding, but it was only an assumption and I think at that  
16 time my recollection is and I think the paper would  
17 corroborate that, but if you go back and have rulemaking,  
18 there was a lot of discussion of will there be ever a case  
19 where a cost of service rate regulated utility would have  
20 insufficient funding. And the answer was that would be  
21 revealed in the performance and metrics. So that's  
22 really the paradigm and it's no different for the  
23 merchant generators.

24 What I think NINA is proposing is a license  
25 condition that would address the question of is there a

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1 basis out there that would give us that presumption, that  
2 assumption that this licensee is qualified, this  
3 applicant is qualified very similar to the way the cost  
4 of service rate regulation creates a presumption for an  
5 electric utility. And there's lots behind that that may  
6 vary case by case, but there's a lot of bases that would  
7 support that presumption for the merchant facility based  
8 on getting financing.

9 So I think what is being proposed for the  
10 merchant generators is no different in concept than what  
11 was done from a licensing perspective for the electric  
12 utilities. And from that standpoint it will never  
13 replace the continuous monitoring through the  
14 construction project. It will never replace what's  
15 required during operation of the plant. It is just one  
16 piece in the licensing puzzle. I think for that reason  
17 the license condition approach is perfectly viable and  
18 would assure public health and safety.

19 MODERATOR CHAZELL: Ms. Ginsberg?

20 MS. GINSBERG: Yes, I just wanted to get  
21 back to the question of sort of one size fits all and to  
22 crispen the answer a little bit, the one size that fits  
23 all is the option of a license condition. That's the one  
24 size that fits all. The notion that you could craft a  
25 license condition here at the table or take NINA's and

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1 necessarily place it into a paper that goes up to the  
2 Commission, I think it's premature. I think it requires  
3 a little bit more discussion.

4 I think that the important one size fits all  
5 also for the license condition is a set of  
6 characteristics, rather than picking Citibank versus  
7 some other entity. I don't think that's the Agency's --  
8 within the applicant's purview and I think that would be  
9 distinctly the wrong way to go. So when you ask about  
10 is there a one size fits all, is there a solution?  
11 There's distinctly a solution and the solution lies in  
12 the Agency's own discretion. The Agency has discretion  
13 to address this issue. I think exercising that  
14 discretion is absolutely right right now, given  
15 everything you've heard this morning.

16 MR. MATTHEWS: And Ellen, I agree 100  
17 percent with everything that you said except I would  
18 suggest that in order to give the Commission some context  
19 as to what you're talking about, NINA has proposed an  
20 example of what an adequate FQ license condition would  
21 look like, so the Commission can look at this and say  
22 well, has somebody thought through what one might look  
23 like? And if NINA's doesn't work, then please let's talk  
24 about one that does.

25 But I think that giving some context for

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1 -- and quite frankly I think NINA has sort of proposed  
2 a Rolls Royce standard and I apologize to the rest of the  
3 industry if you come second and want to do something  
4 different, but I think it is a useful example so that  
5 Commissioners and policy makers can put in context what  
6 we're really asking for.

7 And that was important in Private Fuel  
8 Storage. I mean Private Fuel Storage, if you recall, I  
9 think it was Private Fuel Storage or maybe Claiborne, but  
10 one of those two cases, the Commission said to the staff,  
11 you know, you've talked about contracts, but you haven't  
12 put something in writing that we can see and actually sent  
13 the staff back and said we want to see something. We want  
14 an example of what's really going to satisfy this  
15 condition.

16 MODERATOR CHAZELL: Tom?

17 MR. FREDRICHs: This is Tom Fredrichs of  
18 NRC. There's actually a couple of questions. I'll ask  
19 one and have a response and then maybe ask a second one.  
20 And the first one is there have been a couple of  
21 statements. There's no correlation between budgets or  
22 safety. The NRC is supposed to look at safety and not  
23 worry about financing. To do that comes as close as you  
24 can possibly get to saying financial qualifications are  
25 not a safety concern, without actually saying that. It

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1 seems to be a position where you're saying the NRC can  
2 defer something to the future and it's not really that  
3 important, so don't worry about it. Maybe you can  
4 respond to that.

5 MR. MCBURNETT: Yes, as far as what we're  
6 proposing is using a license condition to provide the  
7 reasonable assurance that financial qualifications are  
8 met, thereby ensuring the public health and safety.  
9 That's the sequence of the process. Not trying to  
10 correlate that financing and financial qualifications  
11 are not -- cannot be -- it's in the regulations that it  
12 is to be considered. It's to be considered within the  
13 context of protecting public health and safety. What  
14 we're proposing is this is a process by which you can  
15 ensure there's reasonable assurance, we're financially  
16 qualified through use of a license condition that fits  
17 the current business needs of the industry.

18 MODERATOR CHAZELL: If there is anybody on  
19 the phone just feel free to jump in.

20 MR. FREDRICH: Did you want to say  
21 something?, Dave?

22 MS. LOFTUS: This is Pat Loftus. I'm the  
23 Director of Strategy for Westinghouse. I'd like to  
24 offer a few comments, if I may.

25 MS. CUBBAGE: Please do.

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1 MS. LOFTUS: First, I'd like to thank  
2 everybody for the opportunity for us to share our views.  
3 We, too, are like a number of those who have come before  
4 me to support NINA's position that a license condition  
5 with the appropriate characteristics does, in fact,  
6 satisfy the financial qualification test of reasonable  
7 assurance required for COL and it does, in fact, address  
8 the need to address the Commission's position of  
9 protecting public health and safety, while at the same  
10 time allowing flexibility to obtain the financing after  
11 a COL has been granted and by obtain that means acquire  
12 and close and fund, as it was previously described, the  
13 project, at the time when local market conditions favor  
14 nuclear energy.

15 I also want to reinforce the point that if  
16 the flexibility to allow the financial qualification at  
17 the time of construction for merchant plants is not  
18 allowed by process, then effectively what may occur is  
19 a de facto enabling of the Commission to shape or limit  
20 energy policy and technology options which would then be  
21 allowed to be entered into the merchant market. Those  
22 are our key points.

23 MODERATOR CHAZELL: Thanks.

24 MR. BECKER: May I make comments, please?

25 MODERATOR CHAZELL: Go ahead.

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1 MR. BECKER: Hi, Gary Becker in the  
2 Licensing Group at NuScale Power. I apologize, I was a  
3 little loathe to jump in after BMW make a comment earlier,  
4 but I'd also like to, on behalf of NuScale, echo support  
5 as an SMR vendor of the proposal for meeting financial  
6 qualifications using a license condition.

7 We are a vendor of a very versatile and  
8 scalable SMR plant design that's especially suited to do  
9 project financing and merchant plant projects, so we  
10 recognize the importance of merchant plants as a  
11 prospective market for our emerging technology and null  
12 SMRs.

13 We believe that the license condition  
14 approach will ensure protection of public health and  
15 safety, but it also provides the flexibility needed for  
16 projects, merchant projects to secure the financing  
17 necessary to invest in the next generation of nuclear  
18 power.

19 MODERATOR CHAZELL: Thank you.

20 MR. BECKER: Thank you very much for the  
21 opportunity to comment.

22 MR. REPKA: Yes, this is David Repka from  
23 Winston and Strawn again. I just wanted to respond  
24 briefly to something Mr. Fredrichs just said and maybe  
25 I'm misunderstanding it, but I certainly don't mean in

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1 anything I suggested and I don't think anybody on behalf  
2 of the industry is suggesting that a lack of financial  
3 qualifications or a lack of financing could never be a  
4 safety issue. I don't think that's what we're saying at  
5 all.

6 I think what we're saying is that there is  
7 from a regulatory perspective there are different ways  
8 to address that issue and only one of which is the  
9 financial qualifications review at the time of  
10 licensing. And it's that financial qualifications  
11 review that would be based on a license condition that  
12 provides reasonable assurance at that time that there is  
13 sufficient funding. Beyond that there is the  
14 continuing monitoring and inspection to assure precisely  
15 that that's an area never occur which is that a lack of  
16 funding will create a safety issue and that's again is  
17 something that I think the licensees of the current  
18 operating fleet and the NRC deal with every day quite  
19 effectively.

20 MR. FREDRICH: Hi, this is Tom Fredrichs,  
21 NRC, again. The other question is really more of a  
22 larger one and I think it was the Westinghouse mentioned  
23 that if the NRC does not allow -- does not issue licenses  
24 before financing is actually identified, that that might  
25 be contrary to our energy policy. This is more of a --

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1 kind of turning that around a little bit, I think the  
2 clear message here is that without getting a license at  
3 -- to go to the marketplace and get more funding or get  
4 funding, that puts at least some level of difficulty into  
5 your project.

6 The question we need to answer that I think  
7 the Commission would be very appreciative of getting an  
8 answer to is why is it the NRC's role to encourage  
9 merchant plants because we are just safety. Why should  
10 we change our regulatory program to encourage the  
11 building of merchant plants?

12 MS. GINSBERG: This is Ellen Ginsberg from  
13 NEI. I don't think the suggestion was that the Agency  
14 changes its regulatory program to provide anyone with an  
15 advantage or a choice. The point is not let the market  
16 do what the market is going to do, but don't put up  
17 barriers so any entrant to the market who seeks to build  
18 a plant would be able to after satisfying all of these  
19 rigorous conditions. That's all it is. In essence,  
20 it's an attempt to be neutral, I think, rather than take  
21 a position with respect to choice of generation source.

22 MR. MATTHEWS: Just -- I'd like to comment  
23 though. Pose the option. I can see people in the Agency  
24 saying well, why do we need this for the COL. We can  
25 complete our technical review and when you're ready and

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1 you have the financing, then come in and we'll handle it  
2 then and then we'll just close things out. Well, let's  
3 say that takes two or three years. I mean  
4 the technical reviewers who were prepared to go to a  
5 mandatory hearing to brief the Commission on why they  
6 signed off on areas, are they going to be available?  
7 Won't a lot of them just be reassigned other areas of the  
8 -- you end up with a whole new team of technical  
9 reviewers. Everyone is looking at everything all over  
10 again. You might as well be applying for a new license  
11 if you allow that to lapse.

12 We want to be able to get to the point where  
13 we spent -- NINA has spent over \$1 billion trying to get  
14 a COL. This Agency has devoted extraordinary resources  
15 to licensing STP 3 and 4. To have this issue be a barrier  
16 to the issuance of that license is -- I just -- I think  
17 a failure of government process.

18 MS. SIMMONS: We can't let John be the only  
19 one picking on us. So we just have to make sure that  
20 other people have an opportunity to pick on us as well.  
21 But I would just ask, you mentioned a couple of times the  
22 COL will be key in obtaining -- is an important thing to  
23 get financing, but what evidence do you have if there's  
24 a question about your project viability now that's an  
25 impediment to financing, how will the COL, after the COL,

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1       how will that change?

2                   MS. GINSBERG: I can answer that question.  
3       And I think the answer is that there's a distinct distrust  
4       of the regulatory process. And it's unfortunate. I've  
5       been doing this since 1983'ish, '84'ish and I think the  
6       unfortunate issue is that there's a persistence of view,  
7       despite the Energy Policy Act and the COL Part 52,  
8       etcetera, that it's going to take too long and I'm going  
9       to put my money at risk before I get my license to operate.  
10      So don't forget, in the Carter years, we were talking  
11      about fully-built plants at 18 to 21 percent carrying  
12      costs, not yet getting their operating license. So  
13      people have a long history and a long memory there, and  
14      I think that's the real fundamental issue.

15                  MS. GINSBERG: If that's the case then, we  
16      have a combined operating license process now which I  
17      think certainly gives more certainty to the market. If  
18      that's the case then then why doesn't our own Government,  
19      the DOE, provide funding prior to a license? They have  
20      a commitment letter and it's conditional upon obtaining  
21      licenses as I understand it. So I would agree from maybe  
22      a Wall Street perspective, there's concerns with the  
23      regulatory process that our very own Government is  
24      providing these loan guarantees has the process that --

25                  MR. MATTHEWS: It is very typical in

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1 project finance that the lenders don't fund until they  
2 know you're going to be able to build. Because the whole  
3 concept of non-recourse project finance is you have a  
4 special-purpose vehicle. It's this entity --

5 MS. GINSBERG: Wait, that's not my  
6 question. You can get a DOE loan commitment, right?

7 MR. MATTHEWS: A conditional loan  
8 guarantee, but they're not funding anything.

9 MS. GINSBERG: Exactly.

10 MR. MATTHEWS: Until you have a COL in hand.

11 MS. GINSBERG: But can we not get  
12 conditional -- can we not get any kind of letter of  
13 credit? I mean you can get financing then that would be  
14 conditional on the COL, just like a DOE loan guarantee,  
15 right?

16 MR. MATTHEWS: A conditional DOE loan  
17 guarantee is conditioned. I mean we submitted a term  
18 sheet for NINA's conditional loan guarantee which was  
19 very close to being executed a year and a half ago and  
20 you can look in there. There are dozens of conditions  
21 that have to be satisfied before it ever gets funded.  
22 And among them is getting the COL, but you also have to  
23 line up a lot of other things.

24 MR. FREDRICHs: I had a follow-up on my  
25 other question about this, the NRC's role in encouraging

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1 the building of merchant plants and we should be clear  
2 here that what you're asking for is a change in our  
3 regulatory program. Right now, the regulations require  
4 you to identify sources of funds or at least reasonable  
5 assurance of getting funds for construction and then you  
6 get the license. What we're talking about here is  
7 reversing the order, getting the license, then  
8 identifying the sources of funds.

9 And the reason for that is market conditions  
10 right now, it's tough for merchant plants. And if only  
11 had a license you could get the financing. And in my view  
12 at least that's a way for the NRC to encourage the  
13 financing of merchant plants. My question is why is that  
14 the NRC's role when we're a safety organization? Why  
15 should the NRC be deciding this and not some other part  
16 of Government?

17 MS. FRANOVICH: This is the NRC, Rani  
18 Franovich from the Office of Nuclear Reactor Regulation.  
19 And I think I'd like to chime in here just to articulate  
20 that from my rather novice perspective I don't know that  
21 that has been articulated here, by our guess at this  
22 meeting.

23 What I have heard is that the licensing  
24 process has a conundrum and funding is a challenge, if  
25 the uncertainty associated with licensing is

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1 outstanding. And what I have heard being proposed is a  
2 condition on the license as a means of resolving that  
3 impediment by also providing a mechanism for the NRC to  
4 ensure that its mandate can be carried out in a manner  
5 that ensures adequate protection of public health and  
6 safety, or at least reasonable assurance for a licensing  
7 decision or a post-licensing decision, actual carrying  
8 out of the license provisions.

9 So I don't know that that would put us in  
10 a position of encouraging this kind of thing. It really  
11 an opportunity to use things that have been used before,  
12 conditions on the license to ensure that our interests  
13 are maintained, but does not impede the process of  
14 seeking funding and completing a construction project.

15 MS. CUBBAGE: I'd also like to add that I  
16 also heard in the presentations not only the issue of  
17 whether you had the COL in hand or not, but the cost of  
18 financing going up further, in advance, you need it  
19 before construction. So I think the requirements to  
20 have all of the financing in hand before the COL could  
21 impact project costs is what I heard.

22 MODERATOR CHAZELL: That was Amy Cubbage.

23 MR. OESTERLE: This is Eric Oesterle from  
24 the staff. Getting back to something that Mike was  
25 focused on and what's the right fix or what's the right

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1 method to fix it, is it rulemaking or license condition,  
2 and without making any presumptions about how the staff  
3 or the Commission might view the viability of either  
4 approach, I was wondering if in developing the proposed  
5 license condition if there was any consideration or  
6 discussion about the need for an exemption to the  
7 existing regulations?

8 MR. MCBURNETT: We've certainly discussed  
9 an exemption that might be a mechanism. We are somewhat,  
10 I guess, puzzled as to why an exemption would be necessary  
11 because we think the Commission has the discretion to use  
12 the license condition and that that's an appropriate  
13 vehicle in this case. However, given that, I would also  
14 cite if the staff came back to me and said send us an  
15 exemption and that will be favorably considered, I'll  
16 submit an exemption.

17 MR. MATTHEWS: I think the condition can be  
18 fashioned to satisfy both the reasonable assurance  
19 requirements and the information requirements of  
20 Appendix C. When Private Fuel Storage was decided, the  
21 rule was you were supposed to have -- either have funds  
22 in hand to construct and operate, or have reasonable  
23 assurance of obtaining them. And it was a policy  
24 decision that was made by the staff that said we'll accept  
25 a license condition that says okay, when you have the

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1 contracts in place, you can demonstrate that you have the  
2 revenue you need, then you can begin construction. That  
3 protects public health and safety. It was just simply  
4 using the existing rules and solving the problem using  
5 a license condition.

6 MS. GINSBERG: So going to an industry  
7 interest here, it seems to me that this one-off notion  
8 of an exemption is not the appropriate way, would not be  
9 an appropriate way for the regulator to take this issue  
10 on. I think you can, as John has said, you can fashion  
11 criteria that would be sufficient to provide the  
12 reasonable assurance of public health and safety without  
13 necessarily going to a one-off on exemptions. And think  
14 that that option would be valuable to the Agency. So  
15 it's proceduralized. So you have it. You use it. And  
16 there's no question about its viability as to any given  
17 project or applying the criteria consistently.

18 MR. MAYFIELD: I think if you were dealing  
19 with a single entity that had this problem, then an  
20 exemption might be a vehicle to use. As a broader issue,  
21 the Commission has told us previously don't use  
22 exemptions to get around the need to change a regulation.  
23 So if it appears to be a broader problem, I don't think  
24 an exemption is a vehicle that we would necessarily be  
25 inclined to pursue.

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1 MS. GINSBERG: Can I also comment on the  
2 rulemaking? I wasn't suggesting and I want to be clear,  
3 I wasn't suggesting rulemaking is necessary. You posed  
4 a question and I said it could be solved with rulemaking.

5 MR. MAYFIELD: And it's one of the things  
6 that we want to try and explore, what is -- what are the  
7 range of options that we might propose to the Commission,  
8 so it was testing whether rulemaking looks like it would  
9 be a viable, longer-term fix. So just testing ideas.

10 I was wonder if NRC counsel has anything,  
11 just to put them on the spot?

12 (Laughter.)

13 No. Mike, Please.

14 MR. SPENCER: Michael Spencer, OGC. John,  
15 you mentioned the PFS example where there was a form  
16 contract that was reviewed and approved prior to the  
17 issuance of the license. Do you think that that is  
18 something that would be necessary here, agreements with  
19 funding sources, could that be done prior to license  
20 issuance, setting up terms for that, whatever would be  
21 necessary to ensure that the funding would be provided?

22 MR. MATTHEWS: Well, let me back up and say  
23 I think I agree with the notion in Private Fuel Storage  
24 that perhaps the standards for reactors ought to be a  
25 little bit higher. And the way I look at the Private Fuel

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1 Storage case, I mean you basically have a form contract  
2 with counterparties unknown, no credit standards. I  
3 mean literally that condition could have been satisfied  
4 by signing contracts with Joe's Trucking Company that  
5 didn't have the wherewithal to even be the credit-worthy  
6 counterpart in the contract.

7 What we've proposed as a license condition  
8 here centered around a project finance is, I believe, far  
9 more rigorous. And if you have U.S. Government and DOE  
10 loan guarantee rules in play, you can look at the DOE  
11 regulations implementing as DOE loan guarantee program  
12 and meet requirements there are quite rigorous. And I  
13 think you can rely on all of that.

14 Now to suggest that we come up with terms  
15 of the credit agreements and things like that, I mean  
16 that's a herculean task. I mean that is -- financing a  
17 multi-billion project like this you're talking about  
18 spending millions of dollars negotiating those  
19 contracts. And to try and do that with the forum right  
20 now, I just don't think would be practical and it wouldn't  
21 be realistic in terms of knowing that that's what you were  
22 going to have.

23 When we originally proposed a license  
24 condition, the first condition we proposed was that we  
25 would accept a license condition that says we won't begin

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1 construction until we close a project finance that meets  
2 all of the detail terms and conditions of the draft DOE  
3 conditional loan guarantee. That term sheet itself,  
4 that conditional loan guarantee was a document that I'm  
5 sure literally millions of dollars were spent on  
6 financial advisors and legal advisors for DOE and for  
7 NINA in order to get to the point of having those detail  
8 terms. It's a very substantial document and we  
9 submitted it. Obviously, it's proprietary.

10 But we would be willing to go to that level  
11 of detail and say we'll accept that license condition.  
12 Now I might not -- we might not ever be able to close a  
13 project finance with those terms, but we might get  
14 something close and then when we got to that point come  
15 in and say well, here are the deltas and we'd like a  
16 license amendment to change the condition to address the  
17 deltas. But that's something that we explored very  
18 early on with the staff.

19 MODERATOR CHAZELL: Go ahead.

20 MS. CAMPBELL: Good morning. This is  
21 Patricia Campbell from GEH and I would just like to echo  
22 the industry supports the position for a license  
23 condition. But I would also like to point out that this  
24 is not a new issue.

25 This is really a continuation of NRC actions

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1 going back at least to 1997 SECY papers and SRMs. And  
2 in 2002, the NRC issued NUREG-1577, Rev 1 to address this  
3 specific issue on newly-formed entities. And if you  
4 wouldn't mind, I would just like to read a condition from  
5 the guidance itself. It says "If the reviewer  
6 determines that a license applicant does not meet these  
7 financial qualifications standards", so take that as a  
8 given. "He or she" referring to the reviewer "will  
9 either deny issuance or transfer of the OL, condition the  
10 OL, or recommend initiation of other regulatory action  
11 to mitigate financial qualification concerns."

12 Now this was issued for public comment and  
13 it was discussed in a SECY paper on new reactor licensing  
14 issues. So this is not a new issue. I think it's just  
15 the first impression, the first time that the merchant  
16 plant COL has actually come to fruition.

17 And it seems to me that the issue about a  
18 license condition has actually already been vetted  
19 through the Commission and the staff in this regulatory  
20 guidance. So I'm confused about why we're talking about  
21 can the Commission use the license condition. It seems  
22 like that's already part of the condition's guidance on  
23 this issue. So I just wanted to point that out.

24 MODERATOR CHAZELL: Thank you. Scott?

25 MR. HEAD: Just one small comment on the

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1 exemption.

2 MODERATOR CHAZELL: Identify yourself for  
3 the record?

4 MR. HEAD: Scott Head of the South Texas  
5 Project. Obviously, I agree with everything that's been  
6 said regarding we don't believe a rule change is  
7 necessary. But if that is where this would end up, we  
8 have participated in significant rule changes that were  
9 facilitated by the submittal of an exemption. The  
10 exemption was used to frame what actually has to be  
11 addressed and so for at least for a lead plant or a pilot  
12 plant, if that's where this ends up, an exemption in our  
13 case might be actually function to define what the rule  
14 change might actually take place.

15 So I think that you ought to keep that in  
16 mind as part of the exemption because we realize the  
17 rules, if it has to be changed, it needs to work for  
18 everybody. Thank you.

19 MODERATOR CHAZELL: Other questions,  
20 comments? Anybody on the phone would like to chime in  
21 at this point? We still have 45 minutes. We're all done  
22 here?

23 Michael?

24 MR. SPENCER: Pat, just to respond to the  
25 point you raise. I don't think anybody is saying that

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1 a license condition can never be used in the financial  
2 qualifications context. It's the extent to which a  
3 license condition in the factual scenario can be used and  
4 if they can, what they would look like.

5 MS. SIMMONS: I promise I won't ask any more  
6 questions. It's Anneliese Simmons again. You  
7 mentioned, John, earlier, it was interesting you said  
8 that you -- it was a timing question. You said well,  
9 people are ready now who reviewed this license and  
10 they're ready to go to a hearing. Couldn't the same  
11 thing happen? We issue a COL and now you have a license.  
12 The license will be dormant for some period of time until  
13 you're ready to build, until the market recovers.

14 So wouldn't the NRC have a responsibility  
15 to -- would you still be qualified to build in 10 years,  
16 12 years until gas prices change and you're able to build  
17 a nuclear power plant? Doesn't have pose a different set  
18 of difficulties because now we have someone who has the  
19 NRC stamp of approval and it might be decades before you  
20 build.

21 MR. MCBURNETT: I will answer that. Once  
22 we have the COL, we are an NRC licensee and we retain all  
23 of the rights and responsibilities thereof and  
24 obligations to as that licensee under your regulations  
25 and oversight.

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1 MS. SIMMONS: Okay, but again, my question  
2 is is the role of the NRC, just from a policy perspective,  
3 it's a Commission type of question, not mind to respond  
4 to, if we're going to expend Government resources to  
5 monitor a licensee that has no plant.

6 MR. MCBURNETT: You will have a licensee.  
7 I would expect you would have to do some level of  
8 oversight of that licensee although given that no  
9 activity is happening, I would expect that oversight  
10 level to be fairly minimal. It would probably be a QA  
11 audit periodically, something -- some kind of --

12 MR. MATTHEWS: And you do that right now.  
13 You have licensees out there. There's a license for an  
14 independent Spent Fuel Storage facility in Idaho that DOE  
15 holds and that it maintains. You can look to any number  
16 of examples --

17 MR. MCBURNETT: By the way, you charge me  
18 for it.

19 MR. MAYFIELD: I was going to point that  
20 out.

21 MODERATOR CHAZELL: Do we have anything  
22 else?

23 MR. MAYFIELD: We've made a number of  
24 comments this morning about public health and safety  
25 being NRC's mission and I don't think there's any

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1 disagreement from the staff. That is our mission. A  
2 previous Chairman commented in a speech that he delivered  
3 more than once that NRC's role is not to decide on the  
4 use of nuclear power. That is a public policy decision  
5 made by policy makers. Once that policy, once that  
6 decision is made, our role is to assure that it's a safe,  
7 secure, and environmentally responsible use of nuclear  
8 power. That's our role.

9           The financial qualification -- assuring  
10 public health and safety, assuring security,  
11 environmental responsible uses of nuclear power is a  
12 multi-legged stool. The financial qualification is an  
13 important leg of that stool. The way I have looked at  
14 this is the question before us that the staff that we need  
15 to pose to the Commission is whether the emphasis on  
16 financial qualifications is appropriate. We don't want  
17 to -- has that leg gotten too big or too small? And I  
18 think that's not a uniform opinion among the staff about  
19 whether it's too big or too small.

20           There are obviously different views from  
21 the industry about that role and I think that's something  
22 that we are going to have to factor in to what we do or  
23 don't say to the Commission in terms of furthering a  
24 policy decision or a revisit of previous policy  
25 decisions.

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1           So I think we've got to decide, we don't want  
2     to do something that puts a disproportionate burden on  
3     the Regional inspectors, on the Resident inspectors.  
4     Similarly, we don't look to have a disproportionate,  
5     either too large or too small emphasis on financial  
6     qualifications. It's a multi-legged stool. Each leg  
7     needs to be capable of carrying its share of the load.

8           So that's the way I've been looking at this.  
9     I know Pat didn't like my answer. I can tell by the look  
10    that -- Patricia and I have shared arguments a number of  
11    times.

12           But where we need to go with this is to  
13    discuss and there was the suggestion earlier that we  
14    needed some further dialogue on this. I think what we  
15    would like to do is work with the industry and I wonder  
16    if NEI would like to serve as the focal point to make sure  
17    we have framed the set of issues that we can set up a  
18    relatively near-term set of meetings more focused in  
19    nature, to talk about this, so that as the staff looks  
20    at framing a paper, presumably to the Commission, that  
21    we have, in fact, adequately addressed everyone's  
22    interests.

23           I always get nervous about taking these  
24    things on when it's a single entity and then we're trying  
25    to frame a policy question based on a single entity. It

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1 just never feels quite comfortable to me. So

2 Ms. Ginsberg, would you guys be so inclined?

3 MS. GINSBERG: Absolutely. So let me  
4 assure you that this is of interest to the industry more  
5 broadly, so it is not simply a single entity question.  
6 I think it's critically important that the Agency look  
7 at it from that perspective because that's a value to  
8 everyone going forward. It establishes a standard. It  
9 sets a consistency, etcetera.

10 In addition, we'd be happy to participate  
11 in any future public meetings. Where a paper or a white  
12 paper or analysis is necessary, we'd be happy to submit  
13 it, give you either a set of options or our views on what  
14 you should propose and then it's up to you to analyze and  
15 decide on that. But we are happy to pursue this issue  
16 on an expedited basis.

17 MR. MAYFIELD: I think that's become  
18 abundantly clear is that this isn't a multi-year  
19 activity. This is more than a couple of weeks, but it's  
20 something that warrants some careful consideration. So  
21 I think maybe the way for the staff to get together, put  
22 together our thoughts, we'll engage you.

23 MS. GINSBERG: Absolutely.

24 MR. MAYFIELD: And then look at how to go  
25 forward with this. Frank is wanting to comment.

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1 MR. AKSTULEWICZ: This is Frank  
2 Akstulewicz with NRC. One of the comments going forward  
3 here that we need to examine that I didn't hear much  
4 discussion about because the discussion in the room  
5 centered on the viability of a condition and what  
6 characteristics the condition should have is how that  
7 demonstration would be made, what decisions the  
8 Commission itself would have to participate in and then  
9 how the public would be invited into that process to  
10 assess whether or not, in fact, the conditions were  
11 satisfied.

12 So I don't know that we need to solve that  
13 today, but it is something that I think we need to think  
14 about because if there is a Commission action involved  
15 what we've done is basically pushed the opportunity for  
16 the public to participate in that oversight process of  
17 financial qualification to some time later after the  
18 license is actually issued. It's a factor that we need  
19 to consider in our on-going discussion.

20 MR. MCBURNETT: I think from our  
21 perspective it would be desirous to craft a license  
22 condition that's sufficiently ministerial that there  
23 really isn't review that happens post-COL.

24 MR. MATTHEWS: And I would point out the  
25 public has already had the opportunity to raise

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1 contentions on the financial qualifications issue. We  
2 have not had any contentions raised, so the public has  
3 had their opportunity to speak to this issue and no one  
4 has spoken to it.

5 MR. MAYFIELD: I think Frank's point is a  
6 fair one in terms of a generic consideration and that's  
7 the public having an opportunity, an appropriate  
8 opportunity to weigh in on these things is something we  
9 always focus on. So I -- while the specifics here may  
10 obviate that need as a more generic matter, that is  
11 obviously something we're going to pay attention how that  
12 works and where it fits in the licensing process.

13 MR. MATTHEWS: I would ask you to take into  
14 account that in any COL proceeding if you've conducted  
15 a hearing, you've given the public the opportunity to  
16 come in on any one of these issues.

17 MR. MAYFIELD: We understand.

18 MR. AKSTULEWICZ: This is Frank  
19 Akstulewicz again. The issue is not whether there is  
20 some question about the financing. It's the opportunity  
21 to demonstrate that they were compliant with whatever the  
22 requirements were.

23 MR. MATTHEWS: Understood. Got it.

24 MR. MAYFIELD: Got it. Okay. Anything  
25 else? I hijacked your meeting, Russ.

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1                   MODERATOR CHAZELL: No problem, sir. I'd  
2 just like to thank everyone again for taking the time to  
3 come out today. I'd like to remind you that if you  
4 haven't signed in yet, please do so before you leave.  
5 There will be a meeting summary posted to ADAMS within  
6 a couple of weeks and if you have any further questions,  
7 please feel free to contact us. Thanks again for your  
8 time.

9                   (Whereupon, at 11:24 a.m., the meeting was  
10 concluded.)  
11

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